TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~283~~. 32.

PAUL HEYMANN, PLAINTIFF IN ERROR,

vs.

SOUTHERN RAILWAY COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED JUNE 1, 1905.

(19,785.)

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1 To the Supreme Court of the State of Georgia.

PAUL HEYMAN, Plaintiff in Error,
vs.
SOUTHERN RAILWAY CO., Defendant in Error.

The petition of Paul Heyman, by Sam'l H. Myers and Milton Strassburger, his attorneys, hereby sets forth that on or about the 25th day of March, A. D. 1905, the Supreme Court of the State of Georgia made and entered a final order and judgment herein in favor of the Southern Railway Co. and against Paul Heymann, in which final order and judgment and the proceedings had prior thereunto in this case certain errors were committed to the prejudice of Paul Heymann, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That the said Supreme Court of the State of Georgia is the highest court of the said State of Georgia in which a decision in this suit and this matter could be had.

Wherefore, Paul Heymann petitions and prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Georgia for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 3rd day of May, A. D. 1905.

SAM'L H. MYERS,
MILTON STRASBURGER,
Attorneys for Paul Heymann.

2 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Supreme Court of the State of Georgia, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Paul Heymann and Southern Railway Company, wherein was drawn in question the validity of a statute of the United States, and the decision was against such statute, a manifest error hath happened, to the great damage of the said Paul Heymann, as by his complaint appears, we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have same at Washington, District of Columbia, within 30 days from the date hereof in the said

Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, the 9th day of May, in the year of our Lord one thousand nine hundred and five.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
EDWARD D. WHITE,
Associate Justice.

3 UNITED STATES OF AMERICA, *ss:*

To Southern Railway Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Georgia, wherein Paul Heymann is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this 8th day of May, in the year of our Lord one thousand nine hundred and five.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

4 On this 11th day of May, in the year of our Lord one thousand nine hundred and five, personally appeared S. H. Myers before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Jos. B. & Bryan Cumming, attorneys of record for Southern Railway Company.

S. H. MYERS.

Sworn to and subscribed the 11th day of May, A. D. 1905.

[Seal of Timothy S. Lyons, Notary Public, Richmond County,

T. S. LYONS,
Notary Public, Richmond County, Ga.

AUGUSTA, RICHMOND COUNTY, GEORGIA.

Service of a copy of the within citation and writ of error received and acknowledged, this 11th day of May A. D. 1905; all other and further service waived.

JOS. B. & BRYAN CUMMING,
Attorneys of Record for Southern Railway Company.

5 PAUL HEYMANN, Plaintiff in Error,
vs.
SOUTHERN RAILWAY COMPANY, Defendant in Error.

Know all men by these presents that we, Paul Heymann, as principal, and The United States Fidelity and Guaranty Company, of Baltimore, Maryland, as sureties, are held and firmly bound unto the Southern Railway Company in the sum of Five Hundred ($500.00) Dollars, to be paid to the said obligees, their successors, representatives and assigns; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 2nd day of May, A. D. 1905.

Whereas the above-named Paul Heymann, as plaintiff in error, hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Georgia.

Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

PAUL HEYMANN. [L. S.]
THE UNITED STATES FIDELITY & GU-RANTY CO., [L. S.]
By JNO. ARMSTRONG, *Att'y in Fact.*
P. C. O'GORMAN, *Att'y in Fact.*
[CORPORATE SEAL.]

Signed, sealed and delivered in presence of:
E. WEIGLE.
J. P. ARMSTRONG,
Notary Public, Richmond County, Ga.
[NOTARIAL SEAL.]

STATE OF GEORGIA, *Richmond County:*

On this 2nd day of May, 1905, before me personally appeared Paul Heymann, to me known to be the person described in and who executed the foregoing bond, and acknowledged that he executed the same as his free act and deed.

J. P. ARMSTRONG,
Notary Public, Richmond County, Georgia.

6 STATE OF GEORGIA, *Richmond County*

On this 2nd day of May, A. D. 1905, personally appeared before me J. L. Armstrong, who being duly sworn deposes and says that he is a member of the local Board of Directors for Augusta, Richmond County, Georgia, of the United States Fidelity and Guaranty Com-

pany of Baltimore, Maryland; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of this Board of Directors, and the said J. L. Armstrong acknowledged said instrument to be the free act and deed of said corporation.

J. P. ARMSTRONG,
[NOTARIAL SEAL.] *Notary Public, Richmond County, Georgia.*

I hereby approve the foregoing bond and sureties this 9th day of May, 1905.

EDWARD D. WHITE,
Associate Justice Supreme Court of the U. S.

7 To the Supreme Court of the State of Georgia.

PAUL HEYMANN, Plaintiff in Error,
vs.
SOUTHERN RAILWAY CO., Defendant in Error.

And now before the Justices of the Supreme Court of the United States of America, at the Capitol in the City of Washington, comes Paul Heymann by his counsel in the above stated cause and says that said cause was a suit upon a contract entered into between the plaintiff in error and the defendant in error for failure to deliver certain whiskies entrusted to the care of the defendant in error for transportation and delivery to parties in Charleston, South Carolina.

The plaintiff in error instituted suit in the Magistrate's court to recover from the Southern Railway Company the value of certain merchandise, to wit, whiskey, intrusted to it in Augusta, Georgia, for transportation and delivery to parties in the State of South Carolina.

The evidence as disclosed by the record shows that the whiskies were for the personal use of consignees, and in due course of transportation the two packages reached *its* destination, Charleston, South Carolina, and were unloaded in the defendant company's warehouse ready for delivery; that almost immediately after the arrival and unloading of the whiskies, and before notice of the arrival could or had been made to consignees, the same *was* seized by two duly appointed constables of the State of South Carolina, acting without warrants, under the Dispensary Law of said State; that the defendant in error failed and neglected to notify the consignee of the seizure, nor did they notify consignor until demand had been made of the Company to show delivery. It further appears from the evidence that the contract of sale had been entered into with the plaintiff in error, in the State of Georgia, by the terms of which he, the plaintiff in error, agreed and guaranteed to deliver the whiskies to the consignee in Charleston, S. C., and that he had refunded to the consignees the amounts paid by them under the term of said contract.

8 The jury returned a verdict for the plaintiff in error for the amount sued for. Defendants moved for a new trial,

which motion was overruled and an appeal was had to the Supreme Court of Georgia, where same was reversed. Upon rehearing of the case, to wit, at the October term, 1904, of the superior court of Richmond county, before a jury duly empaneled, the court after hearing the evidence, and upon motion of counsel for defendant in error, directed a verdict for the defendant in error.

The plaintiff in error moved for a new trial, which motion was overruled, and an appeal was had to the Supreme Court of Georgia, where on March 25th, 1905, said judgment for defendant was affirmed.

Plaintiff in error assigning error therein, says that — the record and proceeding in the aforesaid cause there is manifest error in this, to wit:

That the Supreme Court of the State of Georgia erred in deciding "that intoxicating liquors which have been shipped from Augusta, Georgia, to parties in Charleston, South Carolina, and which have reached Charleston and been placed in a freight warehouse of the Railroad Company in that city to wait the call of the consignees, have arrived in the State of South Carolina and are subject to the Dispensary Laws of the State of South Carolina."

Plaintiff in error says that the judgment of the Supreme Court of the State of Georgia is repugnant to and in conflict with the laws of the United States, and especially the Act of Congress approved August 1890, 25 Stat. 313, known as The Wilson Act, which provides that "all liquors transported into any state or remaining there for use, consumption or sale therein, shall on arrival in such state be subject to the laws of such state enacted in the exercise of its police powers."

Wherefore, The said Paul Heymann, plaintiff in error, prays that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught, and that he may be restored to all things which he has lost by the action, and because of the said judgment and decision.

SAM'L H. MYERS,
MILTON STRASBURGER,
Attorneys and of Counsel for Plaintiff in Error.

9 STATE OF GEORGIA, *Richmond County:*

Be it remembered that on October 29th, at the October Term 1902 of Richmond Superior Court, the case of Paul Heymann *vs.* Southern Railway Company came on to be tried before his Honor Judge E. L. Brinson, Judge of said Court presiding, and a jury duly empanelled, the case being an appeal from a Justice's Court and in a nature of a Suit for damages on account of an alleged breach of contract.

After hearing the evidence and charge of Court the jury rendered a verdict in favor of the plaintiff against the defendant. The Defendant being dissatisfied with the said verdict, at the same term of the Court, and within thirty days of the rendition of the verdict, moved for a new trial.

Thereafter pursuant to proper orders, said motion came on to be heard before His Honor E. L. Brinson on the 15th day of December 1902. At said hearing the Brief of Evidence was approved and ordered filed. The original motion for new trial and the amended motion for new trial approved and the Judge's charge approved and ordered filed. The case was submitted without argument of Counsel. The Court overruled the motion and refused a new trial, to which judgment overruling said motion, defendant excepts, and for specific grounds of error, says the judge erred in rendering said judgment over-ruling said motion upon each and every ground as set out in the original and amended motion for new trial.

Defendant specifies as material to a clear understanding of the errors complained of, the brief of evidence and the following portion of the record, to-wit: The original petition, answer of the Defendant, original motion for new trial, amended motion for new trial, charge of Court, the judgment over-ruling the motion for new trial.

Wherefore within thirty days of the rendition of the judgment complained of, the defendant presents this its bill of exceptions and prays that the same may be certified as true and that the Clerk of the Superior Court of Richmond County be ordered to make a transscript of so much of the record as is in this bill of exceptions specified, and transmit the same, along with this bill of exceptions, to the March term 1903, of the Supreme Court that the errors herein complained of may be corrected.

JOS. B. & BRYAN CUMMING,
G. M. BEASLEY,
Attorneys for Southern Railway Company.

Post Office Address, Jos. B. & Bryan Cumming, G. M. Beasley, Augusta, Ga.

I do certify that the foregoing Bill of Exceptions is true and specifies all of the evidence, and specifies all of the record, material to a clear understanding of the errors complained of, and the Clerk of the Superior Court of Richmond County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the March Term 1903, of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This 22nd day of December, 1902.

E. L. BRINSON,
J. S. C. A. C.

Due and legal service of the within Bill of Exceptions acknowledged. Copy and all further service waived. This 23rd day of December 1902.

SAM'L H. MYERS,
Att'y for Defendant in Error.

Filed in office Dec. 23rd 1902.

J. B. KEENER, *D. C.*

11 STATE OF GEORGIA, *Richmond County:*

I, J. B. Keener, Deputy Clerk of the Superior Court in and for said county, do hereby certify that the above and foregoing is the true and original bill of exceptions as filed in said office December 23rd, 1902, in the case of Southern Railway Co., Pl'ff in Error, *vs.* Paul Heymann, Def't in Error, and that the October 1902 term of said court has not finally adjourned.

Witness my official signature and the seal of said court this 29th day of December, 1902.

[SEAL.] J. B. KEENER, *D. C.*

Filed in office Jan. 2, 1903.

LOGAN BLECKLEY,
D. C. S. C. Ga.

Indorsed on back: No. 14 Augusta. Supreme Court of Georgia. March Term, 1903. Southern Railway Co., Plaintiff in Error, *vs.* Paul Heyman, Defendant in Error. Bill of Exceptions. Jos. B. & Bryan Cumming, G. M. Beasley, Att'ys for Pl'ff in Error.

12 STATE OF GEORGIA, *Richmond County:*

To the 600th District G. M. Justice's Court, Said County:

The petition of Paul Heyman respectfully shows:

1st. That the Southern Railway Company was at the time hereafter named a railroad corporation, and a common carrier, having an office and agent in the City of Augusta, said State and county.

2nd. That on the 6th day of March, 1902, petitioner delivered to the said Southern Railway Company one cask of whiskey, the property of your petitioner, to be transported over its line of railway to Charleston, South Carolina, said shipment having been consigned to P. B. Wise at Charleston South Carolina, under a bill of lading issued by the said Southern Railway Company. Said bill of lading is hereto attached and marked Exhibit "A" and made a part of this petition.

3rd. That on the 8th day of March, 1902, petitioner delivered to said Southern Railway Company one cask of whiskey the property of your petitioner, to be transported over its line of railway to Charleston, South Carolina, said shipment having been consigned to H. D. Harkins, at Charleston, South Carolina, under a bill of lading issued by the said Southern Railway Company. Said bill of lading is hereto attached and marked Exhibit "B" and made a part of this petition.

4th. Defendant neglects and refuses to deliver said shipments aforesaid to consignees.

Wherefore your petitioner prays judgment against the Southern Railway Company in the sum of sixty-seven ($67.00) dollars, and that summons do issue requiring said defendant to be and appear at the next term of this Honorable Court to answer this complaint.

SAM'L H. MYERS,
Plaintiff's Attorney.

EXHIBIT A.

AUGUSTA, GA., 3/6, 190–.

Received in apparent good order and condition from Paul Heymann, (Wholesale Liquors. Standard Cider and Vinegar Works.) the Southern Railroad, following described packages to be delivered in like good order and condition to P. B. Wise, Charleston, S. C. This receipt is subject to all exemptions, rules, conditions and stipulations embraced in the printed Tariff and Classification of
13 Bill of Lading of said Company.

No.	Description.	Weight.
	Barrel.	
	Half Barrel.	
	Keg.	
	Box Fixtures.	
1	Cask whiskey.	
	Box.	
	(Stamp 1 ct.)	
	Jug (crated).	

Released.

W. J. TOWNSEND, *Agent.*

EXHIBIT B.

AUGUSTA, GA., 3/8, 190–.

Received in apparent good order and condition from Paul Heymann (Wholesale Liquors, Standard Cider and Vinegar Works.) By the Southern Railroad, the following described packages in like good order and condition to H. D. Harkins, at Charleston, S. C. Marks same.

This receipt is subject to all exemptions, rules, conditions and stipulations embraced in the printed Tariff and Classification of Bill of Lading of said Company.

No.	Description.	Weight.
	Barrel. (Stamp) 1	
	Half Barrel.	
	Keg.	
	Box Fixtures.	
1	Cask whiskey.	
	Box.	
	Jug (crated).	

Released.

W. J. TOWNSEND, *Agent.*

STATE OF GEORGIA, *Richmond County:*

In Justice's Court, 600th District G. M. W. H. Nurnberger, N. P., *ex Off.* J. P.

To any lawful Constable of said county:

14 Returnable 23rd day of January, 1902.

PAUL HEYMAN
vs.
SOUTHERN RAILWAY CO.

To the defendant:

You are hereby notified to be and appear personally at the justice's court in and for said district, to be held at 10 o'clock, a. m. on the 23rd day of June, 1902, at the usual place of holding justice's court in said district, then and there to answer the plaintiff upon an a/c for $67.00, a copy of which is hereto attached, or in default thereof the court will proceed as to justice may appertain.

Witness my hand and official signature this 7th day of June, 1902.

W. H. NURNBERGER, [SEAL.]
N. P., ex Off. J. P.

I have this day served a copy of the within on defendant personally, this 1 day of June, 1902.

W. S. RADFORD,
County Constable.

Filed in office Oct. 20th, 1902.

GEO. B. POURNELLE, *D. C.*

15 Superior Court, Richmond County, October Term, 1902.

No. 14.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

Appeal.

Now comes the defendant in the above stated case, and for plea and answer says:—

1. It admits the allegations of the 1st. paragraph of Plaintiff's petition.

2. Defendant admits the allegations of the 2d. paragraph of plaintiff's petition.

3. Defendant admits the allegations of the 3d. paragraph of plaintiff's petition.

4. Defendant admits the allegations of the 4th. paragraph of plaintiff's petition.

5. Answering paragraph five of plaintiff's petition, defendant admits that it has not delivered the shipments described in the petition to the consignees, and as justification for not so doing shows that, under the Statute law of South Carolina, no person is allowed to receive, keep, store or sell alcoholic liquors of any description, and under the said Statute officers, denominated Dispensary Constables, are delegated to seize any alcoholic liquors coming into the State which they may suspect are there in violation of the law of the State of South Carolina, and the Constables so appointed are authorized under the Statute, without any warrant or process, to seize and take possession of any alcoholic liquors wheresoever they may find *it*, which they may suspect as being within the State contrary to the Statute aforesaid.

6. Defendant further shows that upon the arrival of the shipments set out in said petition, Dispensary Constables as aforesaid entered upon the premises of the defendant and seized the shipments aforesaid, and the defendant, in obedience to the Statute law of South Carolina, yielded to the seizure thus made, and did
16 not resist the same.

7. This defendant shows that it promptly notified the consignees of such seizure.

8. Defendant further shows that the plaintiff had been paid in full by both the consignees for these shipments, and by reason of having been so paid he had no further right, title or interest therein, and has no right to recover of this defendant for the loss occasioned the consignees by such seizure.

9. Defendant further shows that the plaintiff has never reimbursed one of the consignees, to-wit: P. B. Wise, the amount thus paid him.

10. Defendant further shows that it failed to deliver the shipments aforesaid by reason of the fact that it yielded to the officers of the law of South Carolina, acting under and by virtue of their authority, who seized and took possession of the shipments aforesaid.

JOS. B. & BRYAN CUMMING,
G. M. BEASLEY, *Def't's Att'ys.*

Filed in Office October 18, 1902.

GEO. B. POURNELLE,
Deputy Clerk.

17 Richmond Superior Court, October Term, 1902.

No. 14.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

The above stated case having come on to be heard before His Honor, E. L. Brinson, Judge of said court presiding, and a jury

duly impanneled, during the October Term 1902 of said court, The jury after hearing the evidence, argument of Counsel, and Charge of the court, did, upon the 29th day of October, render a verdict against the defendant for the sum of Sixty-seven dollars, and the plaintiff has entered up judgment ag-inst the defendant for said sum.

The defendant being dis-satisfied with said verdict, now, at the same term of the court at which the same was rendered, and within thirty days after the rendition thereof, moves for a new trial upon the following grounds, to-wit:—

1. Because the verdict was contrary to the evidence.

2. Because the verdict was contrary to the weight of the evidence and the principles of equity and justice.

3. Because the court refused, when requested in writing so to do, to charge the jury as follows, to-wit:—

"It is a complete defense to a Railroad Company in a suit for failure to deliver goods committed to its care to show that an officer of the Law, acting in accordance with the authority conferred upon him by law, has taken the goods from the custody of the Railroad Company. In the case under consideration, under the law of South Carolina certain officers known as Dispensary Constables are authorized to seize liquors in the State without a warrant. Therefore, it was not necessary for a dispensary Constable to have a warrant to seize such liquors as under the law he had the right to seize. I, therefore, charge you if you find that the liquor sued for was taken out of the custody of the Railroad Company by qualified dispensary Constables of the State of South Carolina, and in the State
18 of South Carolina, this would be a complete defense for the defendant Company, and you should find for the defendant."

Said charge setting forth the correct principles of law applicable to the facts in the case.

JOS. B. & BRYAN CUMMING,
Att'ys for Defendant.

Grounds of motion approved subject to correction at the hearing. Nov. 12, 1902.

E. L. BRINSON,
J. S. C. A. C.

Approved as correct. Dec. 15, 1902.

E. L. BRINSON,
J. S. C. A. C.

19 Richmond Superior Court, October Term, 1902.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

The defendant in the above stated case being dis-satisfied with the verdict rendered therein, and having at the same term of the

court, and within thirty days after the rendition of the judgment, moved for a new trial; Ordered that the plaintiff show cause before me at the Court House in Augusta, Georgia, on the 13th day of December 1902, at 10 o'clock, A. M. why a new trial should not be granted upon the grounds set out in defendant's motion.

Further ordered that the defendant have until the hearing of said motion, whether the same take place at the date originally fixed, or at some subsequent date, in which to present for approval a brief of the evidence, which brief when approved to be thereafter filed.

Further ordered that the Movant have leave at any time on or before the hearing of the motion, to amend its motion for new trial.

Further ordered that this rule act as a supersedeas until the further order of the Court.

Nov. 12, 1902.

E. L. BRINSON,
J. S. C. A. C.

Service of the foregoing rule *nisi* acknowledged. Copy and further service waived this Nov. 12, 1902.

SAM'L H. MYERS,
Pl'f's Attorney.

Filed in Office Nov. 12, 1902.

J. B. KEENER, *D. C.*

20 *Amended Motion for New Trial.*

Richmond Superior Court.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

Now comes the defendant in the above stated case, at the same term of the Court at which trial was had, and before the date set for the hearing of the Original Motion for New Trial, and amends its Motion for New Trial already of file by adding:—

1. Because the Court erred in charging the Jury as follows: "In reference to the Dispensary Law, my view of it is this: That no State can make any valid law regulating Interstate Commerce. It does not lie within the power of the Legislature of South Carolina to pass any valid law regulating Commerce between the States of Georgia and South Carolina, and, if they do so, such law is unconstitutional and void on its face."

While the principle stated by the Court is a correct statement of a general principle of law, the defendant contends that the Court erred in giving it in charge in this particular case, as the facts of this particular case do not warrant such a charge. The contention of the defendant being that the authority under which the constable was acting was apparently regular on its face, and that therefore the

carrier should be relieved from liability; that the constable was an officer appointed under the provisions of and acting in accordance with a Statute of the State of South Carolina, and the Railroad Company's Agents were bound to respect the superior force, to-wit: The authority of the Statute of the State of South Carolina, and even though the law under which the constables were acting was unconstitutional, the Railroad Company would be relieved, the authority being apparently regular and valid on its face.

21 2. Because the court erred in charging the Jury as follows:—"If the law itself under which the seizure is made is void and unconstitutional, I do not believe it would be a protection to the Railroad Company. I believe the Railroad Company would have to resort to some means to protect itself against such an illegal procedure, not necessarily by violence, but by appealing to the Court in some way to protect it against such an illegal seizure." Defendant contends that such charge was erroneous, for the reason that if the constables were acting in a manner that was authorized by the Statute Law of the State of South Carolina, the Agents of the Carrier were bound to respect the superior force, to-wit:—The State of South Carolina, represented by its constable appointed under the Statute, and surrender the whiskey, and that on showing that said seizure was made by the regular appointed constables of the State of South Carolina, the Railroad Company should be relieved from liability.

3. Because the Court erred in charging the Jury as follows, to-wit:—"So, if you believe that Paul Heymann consigned a cask of whiskey to the person named in Charleston, and delivered it to the Southern Railway Company here, and that the Railroad contracted to deliver it there, and that it has never done so and that the reason it has never done so is because constables, acting under the Dispensary Law of South Carolina, seized it in the depot of the Railroad Company before it was delivered to the consignee, and that that is the only reason why it has not been delivered, I charge you that would not be a legal defense to the Railroad Company, and it would be liable to the consignor for the delivery of those goods."

Defendant contends that said charge was erroneous for the reason that the seizure was made by regularly appointed constables acting under the authority of a Statute of the State of South Carolina, and that the authority under which they were acting was apparently valid and regular, and that the Railroad Company was there-

22 fore bound to yield to the Superior force, to-wit:—the strong arm of the law, and that the Railroad Company was not bound to inquire into the validity or constitutionality of the law under which the constables were acting; the principle contended for being, that if the process or authority is apparently valid and regular, the Carrier is bound to surrender the property to the officers of the law, and when they surrender property under such circumstances, they are relieved from liability.

JOS. B. & BRYAN CUMMING,
G. M. BEASLEY, *Def'ts Att'ys.*

The grounds of the foregoing amended Motion approved. Dec. 15, 1902.

E. L. BRINSON,
J. S. C. A. C.

Filed in Office December 15, 1902.

GEO. B. POURNELLE, *D. C.*

23 *Motion for New Trial.*

Richmond Superior Court, October Term, 1902.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

The above stated coming on to be heard on Motion of New Trial, and the same having been submitted to the Court, without argument, the said Motion for new trial is hereby overruled. This 15th day of December, 1902.

E. L. BRINSON,
J. S. C. A. C.

24 Appeal.

Richmond Superior Court, October Term, 1902.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

Brief of Evidence.

An agreed statement of facts as follows was offered by plaintiff:—

"Paul Heymann on March 6, 1902, delivered to Southern Railway Company and received from Southern Railway Company a Bill of lading therefor, one cask of whiskey, belonging to the plaintiff at the time of its delivery to the Southern Railway, consigned to P. B. Wise, Charleston, S. C. The copy bill of lading attached to the petition is a true copy of all material parts of the original bill of lading."

"Again, on March 6, 1902, plaintiff delivered another cask of whiskey, the property of the plaintiff, to the Southern Railway Company, consigned to one H. D. Harkins, Charleston, S. C., and the Southern Railway issued and delivered to the plaintiff a bill of lading for said shipment. The copy bill of lading attached to the petition in the suit is a true copy of all material parts of the bill of lading so issued. The aggregate value of these two casks of whiskey amounted to $67.00."

"In due course of transportation these two shipments reached Charleston, and were unloaded into the defendant Company's warehouse in Charleston, ready for delivery. Shortly after the arrival

and unloading of this whiskey, as above set out, one H. A. Patterson and one J. J. Pierson, being at that time duly appointed Con-
25 stables under what is known as the Dispensary Law of South Carolina, a copy of the material portions of which law is hereinafter set out, being at that time duly commissioned as such Constables, in their capacity as such Constables, entered upon the premises of the Southern Railway where the said casks of whiskey were stored, and seized the same, and took the same from the possession of the defendant Company."

"The defendant Company's agent, knowing that these parties were duly appointed Constables under the act above referred to, did not resist the seizure made by said Constables, but yielded to their authority under which they were acting, to-wit: The Statute law of South Carolina, so far as material, is as follows:"—

"SECTION 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed, (whether larger or rice beer) or other liquor, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, or malt, vinous, fermented, brewed (whether larger, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary, or pay a fine of not less than one hundred dollars, nor more than five hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors, except when bought of a State officer authorized to sell the same, or in possession of one, and having been duly tested by the Chemist of the South Carolina College and found to be chemically pure,
26 are declared to be contraband and against the morals, good health and safety of the State, and all alcoholic liquors in this State and not having been tested by the Chemist of the South Carolina College and found to be chemically pure, are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health and safety of the State, and all such liquors to be seized wherever found, without a warrant, and turned over to the State Commissioner."

SECTION 25. That any of the liquors set forth in Section one (1) of this Act, which are contraband, may be seized and taken without warrant by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided. Provided, That liquors purchased

outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon."

SECTION 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person or any other person or persons, shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for a term of not less than three months, nor more than twelve months."

SECTION 32. That all fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage, or other disposition, shall, upon introduction and arrival in this State, be subject to the
27 operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State."

"Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioners and applying for certificates to affix thereto."

"SECTION 46. The Governor shall have authority to appoint one or more State Constables at a salary of not more than two dollars per day and such expenses as the Governor may deem proper when on duty, and two Chief Constables at not more than three dollars each per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the Dispensary fund in the same manner as the salary of the State Commissioner."

"That said seizure was made without any warrant or other legal process, save that the parties making the seizure were Constables and acting under the authority given them by the Dispensary Act."

"Plaintiff was paid in advance for these shipments of whiskey by both Wise and Harkins."

"That the agent of the Southern Railway did not notify consignor of this seizure by the Constabulary officers, but on March 17th. plaintiff, through his attorney S. H. Myers, made demand upon the Railroad to show delivery of these shipments; copies of the reply received from W. J. Townsend as follows."

"AUGUSTA, GA., *March* 21, 1902."

"Mr. Sam'l H. Myers, City.

DEAR SIR: Answering your favor of March 17th, tracing two shipments from Paul Heymann from Charleston, S. C., beg to advise that the shipment consigned to H. D. Harkens was delivered
28 consignee on March 8th. The one to Mrs. J. T. Blomovitch was delivered consignee on February 5th.

Yours truly,

(Signed) W. J. TOWNSEND, *Agent*."

H. O'N.

"AUGUSTA, GA., *March* 27, 1902."

"Mr. Sam'l H. Myers, Att'y, Augusta, Ga.

DEAR SIR: Answering yours of March 22d. which refers to previous correspondence in regard to shipments of whiskey from Paul Heymann, consigned to Harkness, Blomovitch, and Wise, Charleston, S. C. am now advised by our agent at Charleston that all of this whiskey was seized by State Constables on the date mentioned in our letter of March 21st."

Yours truly,

(Signed) W. J. TOWNSEND, *Agent*."

H. O'N.

PAUL HEYMANN, sworn in his own behalf, testified as follows:

In selling whiskey to people in South Carolina, I guarantee delivery. That guarantee is made through advertising matter and catalogues which I send out, very plainly stating that I guarantee delivery in South Carolina. My representatives also give such guarantees. I have here (exhibiting) a thirty-two page catalogue which I send out to the amount of fifty thousand every year. That is the only way we can do business, by guaranteeing delivery. By guaranteeing delivery, we mean to get the goods there or refund the money. In the orders of Mr. Wise and Mr. Harkins, the money accompanied the order. I had this money refunded when they did not get the whiskey.

Cross-examination:

I guaranteed these two particular persons that these two particular shipments would be delivered. The guarantee was made by my representative and in person. I made the sales through the
29 mail. I received the order through the mail with the money enclosed. I shipped the whiskey in response to these orders. The way I guaranteed to these parties that the shipments would be delivered to them was by my advertising matter, which reads "Your goods will leave on the very first train that leaves Augusta after the order is received." My guarantee is a general one. They had a guarantee long since, because I gave them one long since in Charleston, and told them if they wanted any goods to order from me, and if I could not get the goods to them I would refund them the money. I first learned that these goods had been seized by the Dispensary officers through Mr. Myers. I turned the matter over to him because I had suspicions that these special shipments had been seized. I had suspicions because I could not get anything out of the agent of the Southern Railroad here, who I asked to trace the goods, and I wrote the consignees and wrote to my agents to see if the goods were delivered, and my agent wrote me that the parties wanted the money back, that the goods were not there, and he could not find out where they were. After that I learned from Mr. Myers. It was about two weeks after the shipment, I think, I learned about the seizures from Mr. Myers. As to my making any effort to recover

these shipments from the Dispensary officials of South Carolina, there was none to make on my part I did not believe. As a matter of fact I have made no effort.

Redirect:

This was not the first shipment I had made to Mr. Wise and Mr. Harkins. I ship a good deal to Charleston. I know I have shipped to Mr. Wise, but I could not say about Mr. Harkins.

H. D. HARKINS, testified by Commission for defendant, as follows:

I reside at No. 700 King Street, Charleston, and In March 1902 was a retail grocer. I purchased at that time two hundred half pints of whiskey from the plaintiff, and sent him $33.50 with the order to pay for it. I got the whiskey to drink, for my own use. It was not my intention to sell any of the whiskey when received, nor to give any of it away. I was not notified by any of the railroads or railroad agencies in Charleston of the arrival of that whiskey in Charleston. I was not notified by any railroad officer, agent or employee that the whiskey had been seized by the State Dispensary Constables. No agent or employee of mine was notified by any Agent or employee of the railroad Company that the whiskey had been seized. I didn't go or send to the railroad for the whiskey. I was notified first of the seizure by Mr. Heymann's agent in Charleston, Mr. O'Neil.

Cross-interrogatories.

The plaintiff's agent, Mr. O'Neil, paid me back the $33.50 the week following.

P. H. WISE, by interrogatories, testified for the defendant as follows:—

I now reside at Money, Barnwell County. I March 1902 I lived in Charleston, and kept a boarding house there. On March 2, 1902 I purchased of Paul Heymann some whiskey, consummating the purchase through his agent at Charleston. I purchased $33.50 worth, and paid his agent for it the same day I bought it. I bought the whiskey for my own personal use. It was not my intention to sell or give away any of the whiskey. I was not notified by any of the railroads, or railroad agencies in Charleston of the arrival of the whiskey, nor that the whiskey had been seized by the Dispensary Constables, nor was any agent or employee of mine so notified. I was first notified by Mr. Heymann's agent in Charleston. I was notified of the seizure when I went to the depot to receive the shipment, but I had been previously notified by the agent of the plaintiff.

31 *Cross-interrogatories.*

The money was refunded to me by the agent of the plaintiff.

E. S. Bee, by interrogatories, testified for the defendant.

That he lived in Charleston and was in March 1902 Cashier of the Southern Railway Company. He did not recall distinctly whether there was a shipment from Heymann to Wise from Augusta to Charleston in the early part of 1902, but he recollected that there were several shipments of whiskey in casks, cases and barrels from Augusta and other points about that time which was seized in Charleston by the State Constables. It often happened that the name of the shipper is not written out in full on the Way bill, but only the initials, and sometimes only the connecting line. There were quite a number of seizures about that date, but cannot say if this particular shipment was among them. Upon receipt of notice from the foreman of the warehouse of any seizure by a Constable, the consignee was always notified of the same when he called for the goods. All seizures were reported to me. I can safely say if there was a shipment to P. B. Wise which was seized, he was notified of the same when he called for the goods. As to any shipment to H. D. Harkins, I can only answer as I did in reference to shipments to Wise. I cannot say definitely whether or not there was any shipments at that time, but so far as notifying Harkins is concerned, I can only make the same kind of answer as I did in reference to notifying Wise. Whenever parties to whom goods were consigned called for them, they were notified verbally that the goods had been seized. Notices were verbal statements, either by myself or the Assistant Cashier, Mr. T. B. McCarthy, to the party calling for the goods. I cannot say to whom the notices were given in the
32 above mentioned cases. As stated in my direct answer, I have not any distinct recollection of these transactions. I cannot say whether or not any notices were given to Wise and Harkins immediately after the seizure was made. I cannot say whether Harkins or Wise was notified of the seizure prior to the demand for delivery of the shipment. I do not know either Wise or Harkins, nor do I know of any one having authority to act as their Agent or representative.

We agree that the above is a correct Brief of Evidence in the above stated case.

This 4th day of December, 1902.

SAM'L H. MYERS,
Plaintiff's Attorney.

The within Brief of Evidence approved as correct. Let the same be filed as part of Record.

Dec. 15, 1902.

E. L. BRINSON,
J. S. C. A. C.

Filed in Office December 15, 1902.

GEO. B. POURNELLE, *D. C.*

33 *Charge of the Court.*

GENTLEMEN OF THE JURY: Paul Heymann has brought suit against the Southern Railroad Company, alleging that he contracted with them to deliver certain goods for him, as a common carrier, in the City of Charleston. He alleges that they failed to carry out that contract; failed to deliver the goods; failed to return him the goods, and that they are liable to him for the value of the goods.

The Railroad Company has filed a defense, setting up that under a certain law of South Carolina, known as the "Dispensary Law," two constables entered their warehouse in Charleston and seized the cask of liquor, and, for that reason, they could not deliver it, and that they are not responsible to him in law for its value. That is the way the case arises.

Wherever a person delivers goods to a common carrier for it to carry and make delivery thereof to some consignee, and the common carrier fails, without some good and sufficient legal reason, to do so, it would be liable in law to the consignor for the value of the goods.

In reference to the "Dispensary Law," my view of it is this: that no State can make any valid law regulating interstate commerce. It does not lie within the power of the Legislature of South Carolina to pass any valid law regulating commerce between the States of Georgia and South Carolina, and, if they do so, such law is unconstitutional and void on its face.

It is a defense to a railroad company having goods in its care consigned to certain parties if those goods are seized under a valid legal process. That does not necessarily mean that a case arising from a seizure of goods under that process can be made out when it comes to trial, but it must be valid and legal and regular on its face. To illustrate: goods might be in the possession of the Central Railroad here consigned to one party, and another party might at-
34 tach that property. If that attachment was taken out regularly, and, on its face, was regular and proper, and the goods were seized on that, that would be a defense to the Railroad Company, even though on the trial of the case, the attachor might fail to make out his case, but, if the law itself under which the seizure is made is void and unconstitutional, I do not believe it would be a protection to the Railroad Company. I believe the Railroad Company would have to resort to some means to protect itself against such an illegal procedure not necessarily by violence, but by appealing to the Courts in some way to protect it against such an illegal seizure.

So if you believe that Paul Heymann consigned a cask of whiskey to the person named in Charleston, and delivered it to the Southern Railroad Company here, and that the Railroad contracted to deliver it there, and that it has never done so, and that the reason it has never done so is because constables, acting under the "Dispensary Law" of South Carolina seized it in the depot of the Railroad Company before it was delivered to the consignee, and that that is the

only reason why it has not been delivered, I charge you that would not be a legal defense to the Railroad Company, and it would be liable to the consignor for the delivery of those goods.

Another question involved in this case is whether proper notice has been given. Where a seizure of goods in the hands of a common carrier is made under a legal process, it devolves upon the common carrier to give reasonable and proper notice to the consignee or consignor, so that they can assert their rights in the matter, and, if the Railroad Company fails to do that, such seizure would not be a defense to it if it were sued for failure to deliver the goods. In this case, there is an issue on that question between these parties. Paul Heymann, the consignor, alleges that the Railroad Company never gave him any notice at all of this seizure. He alleges that the Railroad Company never gave anybody interested any notice until direct inquiry was made of them sometime after. The Railroad
35 Company, on its part, alleges that it did give reasonably prompt notice. That it is a question of fact. If they did give reasonably prompt notice to the parties at interest, and the process under which it was seized was a legal process, then they would be free from liability; but, if they did not give reasonably prompt notice, or if the seizure was made under a void law, and the parties had no right to make it on account of the law being void, then the Railroad Company could not defend itself on that ground, and would be liable to the consignor.

Paul Heymann is the Plaintiff in this case, and on him rests the burden of proof, to establish what he alleges by a preponderance of the evidence. He must establish by the greater weight of evidence on his side the material allegations contained in his petition. The greater weight of evidence does not necessarily mean the greater number of witnesses. It means the greater weight of evidence in the opinion of the jury, weighed and considered fairly and impartially. However slight that preponderance of evidence may be, it is sufficient for the jury to found their verdict upon.

You are the judges of the facts in this case and the sole judges of the credibility of the witnesses, and, in anything that I may say to you, do not understand me as intimating what has or has not been established by the evidence in the case. I do not mean to give you any such intimation, and you will not so understand me.

If you think the Plaintiff has made out his case, you will return a general verdict for the plaintiff, the form of your verdict being, We, the jury, find for the Plaintiff so much, naming the amount you think he is entitled to recover.

If you do not think the case has been made out, you will return a general verdict for the Defendant, the form of your verdict being, We, the jury, find for the defendant.

A request has been made to me to charge you, a part of which I give you in charge: "It is a complete defense for a railroad company in a suit for failure to deliver goods committed to its care, to show that an officer of the law, acting in accordance with the au-
36 thority conferred upon him by law, has taken the goods from the custody of the railroad company." I have already charged

you that. That is law. But if the seizure was made under a void law—under a State law attempting to regulate interstate commerce—it would be a void law.

I charge you further, that, under what is known as the "Wilson" law, passed by Congress, after a consignment of liquor from one State to another, the same being interstate commerce, has been delivered to the consignee, it would be subject to the police regulations of the State into which it is shipped, but, until delivery has been made to the consignee, if it is still in the possession of the common carrier, it is not subject to the police regulations of that State into which it is shipped.

Take the papers and go to your room and make a verdict.

The foregoing charge approved and ordered filed as a part of the record. Dec. 15, 1902.

E. L. BRINSON,
J. S. C. A. C.

Filed in office Dec. 15, 1902.

GEO. B. POURNELLE, *D. C.*

37 STATE OF GEORGIA, *Richmond County.*

I, J. B. Keener, Deputy Clerk of the superior court in and for said county, do hereby certify that the above and foregoing is a true and correct copy of such parts of the record as authorized by the bill of exceptions to be copied and transmitted to Supreme Court of Ga. in the case of Southern Railway Co., Pl'ff. in Error, *vs.* Paul Heyman, Deft. in Error; and that the October 1902 term of said court has not finally adjourned.

Witness my official signature and the seal of said court this Dec. 29th, 1902.

J. B. KEENER, *D. C.* [SEAL.]

Filed in office Jan. 2, 1903.

LOGAN BLECKLEY,
D. C. S. C. Ga.

Indorsed on back: No. 14 Augusta Circuit. March term, 1903. Supreme Court of Georgia. Southern Ry. Co. *versus* Heyman. Transcript of Record.

38 Supreme Court, State of Georgia. March Term, 1903.

SOUTHERN RAILWAY COMPANY
v.
HEYMANN.

1. Intoxicating liquors which have been shipped from Augusta, Georgia, to parties in Charleston, South Carolina, and which have reached Charleston and been placed in a freight warehouse of the railroad company in that city to await the call of the consignees, have "arrived" in the State of South Carolina, within the meaning of the act of Congress of August 8, 1890, known as the Wilson act, which provides that "all fermented, distilled, or intoxicating liquors or liquors transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory."
2. A railroad company is not liable for loss of property entrusted to it for shipment, occasioned by seizure of the property by an officer of the law under a *prima facie* valid authority.

39 CANDLER, *J.*:

Heymann, a wholesale liquor-dealer in Augusta, made two shipments of whisky over the Southern Railway to persons in Charleston, South Carolina. Upon reaching Charleston, the whisky was placed in a warehouse of the railroad company, where it was shortly afterwards seized by constables under what is known as the dispensary law of South Carolina. That law provided that "the transportation, removal, or taking from the depot or other place, by consignee or other person, or the payment of freight or express or other charges * * * upon any spirituous or malt, vinous, fermented, brewed, * * * or other liquors, or any compound or mixture thereof, * * * is prohibited;" that "all such liquors, except when bought of a State officer authorized to sell the same, * * * are declared to be contraband and against the morals, good health, and safety of the State," and that all of such liquors are "to be seized, wherever found, without a warrant, and turned over to the State Commissioner."

Heymann had guaranteed delivery of the whisky to the consignees, and was compelled to return to them the purchase-price which they had paid. He sued the railroad company and obtained a verdict for the price of the whisky. The defendant made a motion for a new trial, which was overruled, and it excepted.

1. It is apparent that the decision of this case depends upon two questions: first, was the seizure of the whisky by the constables in

Charleston a *prima facie* valid exercise of legal authority; and second, if it was, did that fact excuse the railroad company from liability on account of the loss of the goods entrusted to it for shipment? In order to determine the first question it becomes necessary to decide whether, at the time of the seizure, the interstate shipment of the goods had been completed; for if they were still in the course of interstate transportation, the seizure by the constable was not even *prima facie* legal, for the very law under which the seizure was made had, prior to such seizure, been declared by the
40 Supreme Court of the United States to be unconstitutional in so far as it interfered with interstate commerce. Scott *v.* Donald, 165 U. S. 58. It therefore follows that if the shipment had not been completed at the time the goods were seized, the railroad company would have no right to defend on the ground that it submitted to the superior authority, granting that such a defense, if established, would relieve it from liability. In support of the contention that the interstate shipment had not ended, counsel for the defendant in error relies upon the case of Rhodes *v.* Iowa, 170 U. S. 412. In that case the court held that an Iowa statute which prohibited any express or railway company from transporting or conveying intoxicating liquors between points, or from one place to another within the State, without first having been furnished by the county auditor of the county to which the liquor was to be transported, or was consigned for transportation, a certificate that the person to whom the liquor was to be transported was authorized to sell such intoxicating liquors in such county, did not apply to a box of spirituous liquors shipped by rail from a point in Illinois to a citizen of Iowa at his residence in that State, while in transit from its point of shipment to its delivery to the consignee, without causing the Iowa law to be repugnant to the constitution of the United States; and that moving such goods in the station from the platform on which they were put on arrival, to the freight warehouse, is a part of the interstate commerce transportation. It is argued, that, under the ruling in the Rhodes case, an interstate shipment is not complete until the goods are delivered to the consignee; that not until such delivery can they be said to have "arrived," within the meaning of the act of Congress of August 8, 1890, commonly known as the Wilson act, which provides that all intoxicating liquors "transportated into any State or territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as
41 though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." If this contention be correct, then the judgment of the lower court must be affirmed; for the railroad company could not relieve itself of liability by reason of the fact that it yielded to the exercise of a palpably illegal and unwarranted authority. We do not, however, draw the same conclusion from the argument in the Rhodes

case as does counsel for the defendant in error, as we do not find in that case any authority for the proposition laid down, or any reason for a ruling on that proposition. The Rhodes case holds nothing more or less than that the movement of a package of goods from the platform of a station to a freight warehouse (the goods having been shipped from outside the State) is a part of the interstate transportation; and that the servant of the railroad company so moving the package could not be convicted under the State statute under consideration. There was no question in the case as to whether or not the interstate shipment was completeed upon reaching the warehouse, or if delivery to the consignee was necessary to complete such transportation; and while some of the language used by Mr. Justice White in delivering the opinion would seem to indicate that he considered delivery essential to an "arrival" under the Wilson act, that point was not in issue and was not ruled. We think it far more consistent with the evident purpose of the Wilson act to hold that when the goods have been placed in the railroad company's warehouse in readiness for the call of the consignee, the interstate transportation is at an end, and that the goods have "arrived," within the meaning of that act, and are at once subject to the State law passed in the exercise of its police power. Under the Rhodes case, so long as the goods are being moved to the ultimate end of their railroad journey, they are in the course of interstate transportation. Under the law of Georgia, when they are placed in a freight warehouse after having been shipped within the usual time re-
42 quired for transportation, the relationship of the carrier and shipper ceases, and the railroad company becomes simply a warehouseman, and this without the necessity of notifying the consignee of their arrival. *Georgia & Alabama Ry. v. Pound* 111 Ga. 7 and cases cited. If, then, the goods were in Charleston in the hands of a bailee awaiting the call of the consignee, we fail to see how it can be said, without manifest absurdity, that in any sense they had not arrived in the State of South Carolina.

In support of the view here announced, we call attention to the recent case of State *v.* Intoxicating Liquors (Me.), 49 Atl. 670. There it appeared that certain liquors were shipped from Boston, Mass. to Machias in the State of Maine, consigned to the shippers. They arrived at Machias and were transferred to a freight-house used exclusively by the railroad company, where, on the afternoon of the day following their arrival and storage in the warehouse, they were seized by officers under the provisions of the Maine law. There had been no delivery of the liquors, and no notice given to any one of their arrival. It was held, "that the liquors in question, at the time of their seizure, had arrived within the State, so as to be subject to the operation and effect of the laws of this State enacted in the exercise of its police powers, within the meaning of the act of Congress of August 8, 1890, commonly known as the 'Wilson act.'" Commenting upon the case of Rhodes *v.* Iowa, *supra*, the court in the opinion (p. 672) says: "It is true that in the opinion of the Court this language is used: 'We think that, interpreting the statute by the light of all its provisions, it was not intended to and did not cause

the power of the State to attach to an interstate-commerce shipment whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee.' But it does not seem to us that this was necessarily involved in the question decided. If the act of moving the package from the platform to the freight-house was a part of the interstate-commerce transportation, as the court held it was, and the transportation was not consum-ated until the package had been
43 moved to and deposited within the freight-house, so that the liquors had not arrived within the State until that act had been performed, then the Iowa statute could not apply to any part of such transportation, and it was unnecessary to a decision of the point involved to hold that such transportation was not completed until delivery to the consignee." The same distinction as to the Rhodes case was made in the case of *Southern Express Co. v. State,* 114 Ga. 226, where it was held, that, "Relatively to a package of whisky shipped by express from another State to a named person in a designated city in this State, to be there delivered to him upon his paying to the agent of the express company at that point a stipulated price therefor, the penal laws of this State in reference to the unlawful sale of intoxicating liquors become of force when such package has reached the point of its destination and is being held by such express agent until the sale of the whisky has become completed in accordance with such directions of the consignor." It is urged, however, that the following language in the opinion in the *Southern Express Company* case is authority for the position taken by the defendant in error. "The purpose of the shipment must be taken into consideration. If that purpose had been simply that the package of liquor, upon reaching the hands of the express company's agent at Dalton, should, upon payment of the express charges thereon, be delivered to the consignee, then, perhaps, under the decision in the Rhodes case, the package had not arrived until the consignee received it from such agent." It is, of course, apparent that this language does not constitute a ruling by the court, but was merely a passing observation as to what might "perhaps" be the ruling made in the hypothetical case given, in the event the court should see fit to be guided by the *obiter dicta* of the Rhodes case. In the light of what has already been held in this opinion, it is unnecessary to say more on this subject than that the language quoted has no bearing, even *arguendo,* upon the case now under consideration.

2. The foregoing discussion leads us to the conclusion that
44 the seizure of the whisky by the constables in Charleston was, at least, *prima facie* legal; and it is next in order to consider whether the railroad company will be excused from liability for the loss of the goods by reason of having submitted to the authority of the officers. The contention of counsel for the defendant in error is, that, as a common carrier, the railroad company was an insurer of the goods entrusted to it for shipment, and would only be relieved from liability by showing that the loss was occasioned by the act of God or the public enemy. Civil Code, Sec. 2664, provides

that in cases of loss the presumption of law is against the carrier, and no excuse avails him unless it was occasioned by the act of God or the public enemies of the State. But, as was said by Judge McCay in *Savannah R. Co. v. Wilcox*, 48 Ga. 437, "this has always been qualified with certain limitations as to when his liability ceases when he is discharged from further prosecution of his undertaking, as if * * * they have been taken from him by legal process." "Like every other person, the carrier is bound, both by duty and necessity, to respect and yield to the paramount public authority in power at the place where his undertaking is to be performed. * * * If the goods, without his fault, are or become obnoxious to the requirements of the police power of the State, and are injured or destroyed by its authority, as in the case of * * * intoxicating liquors intended for use or sale in violation of law, the carrier can not be held liable." Hutch. Car. (2d ed.) Sections 210*b*, 210*c*. The reason for such a rule is at once apparent; for to hold that a railroad company is bound to resist the lawful authority in protecting the goods of a shipper would be to lay down a doctrine dangerously approaching anarchy. In the present case it was in evidence that the whisky was seized by duly appointed officers of law of the State of South Carolina, and that they were acting within the authority of a statute of that State. We are not prepared to hold that the railroad company was bound to test the validity of the statute under which the goods were seized, by resisting the
45 seizure; for to do so would be to entirely change the contract of carriage and impose upon the carrier a burden greater than it undertook, or in reason and common sense ought, to bear.

We conclude, therefore, that the verdict rendered by the jury in the court below was contrary to law, and should have been set aside on motion for a new trial.

Judgment reversed. All the Justices concur, except Lamar, J., disqualified, and Turner, J., not presiding.

46 SOUTHERN RY. CO.
v.
PAUL HEYMAN.

This case came before this court upon a writ of error from the superior court of Richmond county; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed, because the court erred in overruling the motion for a new trial.

August 14, 1903.

All the Justices concur, except Lamar, J., disqualified, and Turner, J., not presiding.

47 Clerk's Office, Supreme Court of Georgia.

ATLANTA, GA., *May* 29, 1905.

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the bill of exceptions, transcript of

record, opinion and judgment of the Supreme Court of Georgia in the case of Southern Railway Company *v.* Paul Heyman.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

48 STATE OF GEORGIA, *Richmond County.*

Be it remembered that on the 24th day of October, at the October Term, 1904, of Richmond Superior Court, there came on to be tried before His Honor, Henry C. Hammond, Judge of said court presiding, and a Jury impaneled, the case of Paul Heyman *vs.* Southern Railway Company, the case being an appeal from the Justice Court, and in the nature of a suit for damage on account of an alleged breach of contract for failing to deliver shipments intrusted to defendant's care for delivery.

After hearing the evidence, and upon motion, a verdict, under and by direction of His Honor, Henry C. Hammond, Judge of said Court then and there presiding, was rendered for the defendant.

The Plaintiff being dissatisfied with said verdict at the same term of the court, and within thirty days after the rendition of said verdict, moved for a new trial.

Thereafter, pursuant to proper orders, said motion came on to be heard before His Honor, Henry C. Hammond, on the 8th day of November, 1904. At said hearing the brief of evidence was approved and ordered filed. The original motion for new trial and the Judge's charge approved and ordered filed. The case was submitted without argument of counsel. The court overruled the motion and refused a new trial, to which judgment overruling said motion plaintiff excepts, and for specific grounds of error says, the Judge erred in rendering said judgment overruling said motion upon each and every ground as set out in the original motion for a new trial.

Plaintiff specifies as material to a clear understanding of the errors complained of, the brief of evidence and the following portion of the record, to-wit: The original petition, original motion for new trial, charge of the court, the judgment overruling the motion for new trial.

49 And now comes the said Paul Heyman within thirty days of the rendition of the judgment complained of and presents this his bill of exceptions, and prays that the same may be certified as true, and that the Clerk of the Superior Court of Richmond County be ordered to make a transcript of so much of the record as in this bill of exceptions specified, and transmit the same, together with this bill of exceptions to the March Term, 1905, of the Supreme Court, that the errors herein complained of may be reviewed and corrected.

SAM'L H. MYERS,
Attorney for Paul Heymann.

Post Office Address: Augusta, Georgia.

I do certify that the foregoing bill of exceptions is true and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Richmond County, is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the March Term, 1905, of the Supreme Court, that the error alleged to have been committed may be considered and corrected.

This 10th day of November, 1904.

HENRY C. HAMMOND,
Judge Superior Court, Augusta Circuit.

Due and legal service of the within bill of exceptions acknowledged. Copy and all further service waived. This 10th day of November, 1904.

JOS. B. & BRYAN CUMMING,
Attorney- for Defendant in Error.

Filed in office November 10, 1904.

WM. D'A. WALKER, *Clerk.*

50 STATE OF GEORGIA, *Richmond County.*

CLERK'S OFFICE, SUPERIOR COURT.

I, William D'A. Walker, clerk of the superior court of said county, do hereby certify that the foregoing is the true original bill of exceptions filed in said office on the 10th day of November, 1904, in the case of Paul Heymann, Plaintiff in Error, *vs.* Southern Railway Company, Defendant in Error; and that a copy thereof has been made and is of file in said office.

Witness my official signature and the seal of said court
[SEAL.] this 19th day of November, 1904.

WM. D'A. WALKER,
Clerk Superior Court, Richmond County, Ga.

Filed in Office Nov. 21, 1904.

LOGAN BLECKLEY,
D. C. S. C. Ga.

Indorsed on back: No. 3 Augusta Circuit. March Term, 1905. Supreme Court of Georgia. Heyman *versus* Southern R. Co. Bill of exceptions.

51 To the 600th District G. M. Justice's Court, Said County.

STATE OF GEORGIA, *Richmond County:*

The petition of Paul Heymann respectfully shows:

1st. That the Southern Railway Company was at the time hereafter named a Railroad Corporation, and a common carrier, having an office and agent in the City of Augusta, said State and County.

2nd. That on the 6th day of March, 1902, petitioner delivered to

the said Southern Railway Company One cask of Whisky, the property of your petitioner, to be transported over its line of railway to Charleston, South Carolina, said shipment having been consigned to P. B. Wise, at Charleston, South Carolina, under a Bill of Lading issued by the said Southern Railway Company; said Bill of Lading is hereto attached and marked Exhibit "A." and made a part of this petition.

3rd. That on the 8th day of March, 1902, petitioner delivered to said Southern Railway Company one cask of Whisky, the property of your petitioner, to be transported over its line of railway to Charleston, South Carolina, said shipment having been consigned to H. D. Harkens, at Charleston, South Carolina, under a Bill of lading issued by the said Southern Railway Company; said Bill of Lading is hereto attached and marked Exhibit "B," and made a part of this petition.

4th. The aggregate values of said shipments aforesaid was Sixty-seven ($67.00) Dollars.

5th. Defendant neglects and refuses to deliver said shipments aforesaid to consignees.

Wherefore your petitioner prays judgment against the Southern Railway Company in the sum of Sixty-seven ($67.00) Dollars, and that summons do issue requiring said defendant to be and appear at the next term of this Honorable Court to answer this complaint.

SAM'L H. MYERS,
Plaintiff's Attorney.

52 EXHIBIT "A."

AUGUSTA, GA., 3/6, 1902.

Received in apparent good order and condition from
Paul Heymann,
Wholesale Liquors,
Standard Cider and Vinegar Works,
By the Southern Railroad,
the following described package, to be delivered in like good order and condition to
P. B. Wise
At Charleston, S. C.

Marks.

This receipt is subject to all exemptions, rules, conditions and stipulations embraced in the printed Tariff and Classification of Bill of Lading of said Company.

No.	Description.	Weight.
	Barrel.	
	Half Barrel.	
	Keg.	
	Box fixtures.	
1	Cask Whiskey.	
	Box.	
	Jug (Crated).	

Released.

W. J. TOWNSEND, *Agent.*

53 EXHIBIT "B."

AUGUSTA, GA., 3/8, 1902.

Received in apparent good order and condition from
Paul Heymann,
Wholesale Liquors,
Standard Cider and Vinegar Works,
By the Southern Railroad,
the following described packages, to be delivered in like good order and condition to
H. D. Harkens,
At Charleston, S. C.

Marks.

This receipt is subject to all exemptions, rules, conditions and stipulations embraced in the printed Tariff and Classification of Bill of Lading of said Company.

No.	Description.	Weight.
	Barrel.	
	Half Barrel.	
	Keg.	
	Box fixtures.	
1	Cask Whiskey.	
	Box.	
	Jug (Crated).	

Released.

W. J. TOWNSEND, *Agent.*

54 STATE OF GEORGIA, *Richmond County:*

In Justice's Court, 600th District G. M. W. H. Nurnberger, N. P., *ex Off.* J. P.

To any lawful constable of said county:
Returnable 23rd day of June, 1902.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY CO.

To the defendant:

You are hereby notified to be and appear personally at the justice court in and for said district, to be held at 10 o'clock a. m. on the 23rd day of June, 1902, at the usual place of holding justice's court in said district, then and there to answer the plaintiff upon an a/c for $67.00, a copy of which is hereto attached; or in default thereof the court will proceed as to Justice may appertain.

Witness my hand and official signature, this 7th day of June, 1902.

W. H. NURNBERGER, [SEAL.]
N. P., ex Off. J. P.

Served a copy of the within on defendant personally this 13th day of June, 1902.

W. S. RADFORD,
County Constable.

S. H. MYERS, *Pl'ff's Att'y.*

Filed in office Oct. 20, 1902.

GEO. B. POURNELLE, *D. C.*

55 Richmond County Superior Court, October Term, 1904.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

Brief of Evidence.

An agreed statement of facts as follows was offered by plaintiff:—"Paul Heymann on March 6, 1902, delivered to Southern Railway Company and received from Southern Railway Company a Bill of lading therefor, one cask of whiskey, belonging to the plaintiff at the time of its delivery to the Southern Railway, consigned to P. B. Wise, Charleston, S. C. The copy bill of lading attached to the petition is a true copy of all material parts of the original bill of lading."

Again, on March 8, 1902, plaintiff delivered another cask of whiskey, the property of the plaintiff, to the Southern Railway Company, consigned to one H. D. Harkins, Charleston, S. C., and the Southern Railway issued and delivered to the plaintiff a bill of lading for said shipment. The copy of lading attached to the petition in the suit is a true copy of all material parts of the bill of lading so issued. The aggregate value of these two casks of whiskey amounted to $67.00."

"In due course of transportation these two shipments reached Charleston, and were unloaded into the defendant Company's warehouse in Charleston, ready for delivery. Shortly after the arrival and unloading of this whiskey, as above set out, one H. A. Patterson and one J. J. Pierson, being at that time duly appointed Constables under what is known as the Dispensary Law of South Carolina, a copy of the material portions of which law is hereinafter set out,
56 being at that time duly commissioned as such Constables, in their capacity as such Constables, entered upon the premises of the Southern Railway, where the said casks of whiskey were stored, and seized the same, and took the same from the possession of the defendant Company."

"The defendant Company's agent, knowing that these parties were duly appointed Constables under the act above referred to, did not resist the seizure made by said Constables, but yielded to their authority under which they were acting, to-wit: The Statute law of South Carolina, which, so far as material, is as follows:"—

"SECTION 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed, (whether larger or rice beer) or other liquor, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm or corporation; the transportation, removal, the taking from the depot or other places by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, malt, vinous, fermented, brewed (whether larger, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary, or pay a fine of not less than one hundred dollars, nor more than five hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors, except when bought of a State officer authorized to sell the same, or in possession of one, and having been duly tested by the Chemist of the South Carolina College and found to be chemically pure, are declared to be contraband and against the morals, good health and safety of the State, and all alcoholic
57 liquors in this State and not having been tested by the Chemist of the South Carolina College and found to be chemically pure, are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and turned over to the State Commissioner."

"SECTION 25. That any of the liquors set forth in Section (1) one of this Act, which are contraband, may be seized and taken without warrant by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided. Provided: That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon."

"SECTION 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or persons so offend-

ing shall, upon conviction, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for a term of not less than three months, nor more than twelve months."

"SECTION 32. That all fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage, or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been pro-
58 duced in this State."

"Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioners and applying for certificates to affix thereto."

"SECTION 46. The Governor shall have authority to appoint one or more State Constables at a salary of not more than two dollars per day and such expenses as the Governor may deem proper when on duty, and two Chief Constables at not more than three dollars each per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the Dispensary fund in the same manner as the salary of the State Commissioner."

"That said seizure was made without any warrant or other legal process, save that the parties making the seizure were Constables and acting under the authority given them by the Dispensary Act."

"Plaintiff was paid in advance for these shipments of whiskey by both Wise & Harkins."

"That the agent of the Southern Railway did not notify consignor of this seizure by the Constabulary officers, but on March 17th. Plaintiff, through his attorney, S. H. Myers, made demand upon the Railroad to show delivery of these shipments; copies of the reply received from W. J. Townsend as follows."

"AUGUSTA, GA., *March* 21, 1902."

Mr. Sam'l H. Myers, City,

DEAR SIR: Answering your favor of March 17th. tracing two shipments from Paul Heymann for Charleston, S. C., beg to advise that the shipment consigned to H. D. Harkins was delivered consignee on March 6th. The one to Mrs. J. T. Blomovitch was delivered consignee on February 5th.

Yours truly,
(Signed) W. J. TOWNSEND, *Agent.*"

H. O'N.

59 "AUGUSTA, GA., *March* 27, 1902."

"Mr. Sam'l H. Myers, Att'y., Augusta, Ga.

DEAR SIR: Answering yours of March 22nd. which refers to previous correspondence in regard to shipments of whiskey from Paul Heymann, consigned to Harkness, Blomovitch, and Wise, Charles-

ton, S. C., am now advised by our agent at Charleston that all of this whiskey was seized by State Constable on the date mentioned in our letter of March 21st."

Yours truly,

(Signed) W. J. TOWNSEND, *Agent.*"

H. O'N.

PAUL HEYMANN, sworn in his own behalf, testified as follows:

In selling whiskey to people in South Carolina, I guarantee delivery. That guarantee is made through advertising matter and catalogues which I send out, very plainly stating that I guarantee delivery in South Carolina. My representatives also give such guarantees. I have here (exhibiting) a thirty-two page catalogue which I send out to the amount of fifty thousand every year. That is the only way we can do business, by guaranteeing delivery. By guaranteeing delivery, we mean to get the goods there or refund the money. In the orders of Mr. Wise and Mr. Harkins, the money accompanied the order. I had this money refunded when they did not get the whiskey.

Cross-examination:

I guaranteed these two particular persons that these two particular shipments would be delivered. The guarantee was made by my representative and in person. I made the sales through the mail. I received the order through the mail with the money enclosed. I shipped the whiskey in response to these orders. The way I
60 guaranteed to these parties that the shipments would be delivered to them was by my advertising matter, which reads "Your goods will leave on the very first train that leaves Augusta after the order is received." My guarantee is a general one. They had a guarantee long since, because I gave them one long since in Charleston, and told them if they wanted any goods to order from me, and if I could not get the goods to them I would refund them the money. I first learned that these goods had been seized by the Dispensary officers through Mr. Myers. I turned the matter over to him because I had suspisions that these special shipments had been seized. I had suspicions because I could not get anything out of the agent of the Southern Railroad here, who I asked to trace the goods, and I wrote the consignees and wrote to my agent to see if the goods were delivered, and my agent wrote me that the parties wanted the money back, that the goods were not there, and he could not find out where they were. After that I learned from Mr. Myers. It was about two weeks after the shipment, I think, I learned about the seizure from Mr. Myers. As to my making any effort to recover these shipments from the Dispensary officials of South Carolina, there was none to make on my part I did not believe. As a matter of fact I have made no effort.

Redirect:

This was not the first shipment I had made to Mr. Wise and Mr. Harkins. I ship a good deal to Charleston. I know I have shipped to Mr. Wise, but I could not say about Mr. Harkins.

H. D. HARKINS, testified by Commission for defendant, as follows:
I reside at No. 700 King Street, Charleston, and In March 1902 was a retail grocer. I purchased at that time two hundred
61 half pints of whiskey from the plaintiff, and sent him $33.50 with the order to pay for it. I got the whiskey to drink, for my own use. It was not my intention to sell any of the whiskey when received, nor to give any of it away. I was not notified by any of the railroads or railroad agencies in Charleston of the arrival of that whiskey in Charleston. I was not notified by any railroad officer, agent or employee that the whiskey had been seized by the State Dispensary Constables. No agent or employee of mine was notified by any Agent or employee of the Railroad Company that the whiskey had been seized. I didn't go to the railroad for the whiskey. I was notified first of the seizure by Mr. Heymann's agent in Charleston, Mr. O'Neill.

Cross-Interrogatories.

The plaintiff's agent, Mr. O'Neill, paid me back the $33.50 the week following.

P. B. WISE, by interrogatories testified for the defendant as follows:
I now reside at Money, Barnwell County. In March 1902 I lived in Charleston, and kept a boarding house there. On March 2, 1902, I purchased of Paul Heymann some whiskey, consumating the purchase through his agent at Charleston. I purchased $33.00 worth, and paid his agent for it the same day I bought it. I bought the whiskey for my own personal use. It was not my intention to sell or give away any of the whiskey. I was not notified by any of the railroads, or railroad agencies in Charleston of the arrival of the whiskey, nor that the whiskey had been seized by the Dispensary Constables, nor was any agent or employee of mine so notified. I was first notified by Mr. Heymann's agent in Charleston. I was notified of the seizure when I went to the depot to receive the shipment, but I had been previously notified by the agent of the plaintiff.

62 *Cross-Interrogatories.*

The money was refunded to me by the agent of the plaintiff.

E. S. BEE, by interrogatories, testified for the defendant.
That he lived in Charleston and was in March 1902 Cashier of the Southern Railway Company. He did not recall distinctly whether there was a shipment from Heymann to Wise from Augusta to Charleston in the early part of 1902, but he recollected that there were several shipments of whiskey in casks, cases and barrels from Augusta and other points about that time which were seized in Charleston by the State Constables. It often happened that the name of the shipper is not written out in full on the Way bill, but only the initials and sometimes only the connecting line. There were quite a nember of seizures about that date, but cannot say if this particular shipment was among them. Upon receipt of notice from the

foreman of the warehouse of any seizure by a Constable, the consignee was always notified of the same when he called for the goods. All seizures were reported to me. I can safely say if there was a shipment to P. B. Wise which was seized, he was notified of the same when he called for the goods. As to any shipment to H. D. Harkins, I can only answer as I did in reference to shipments to Wise. I cannot say definitely whether or not there was any shipments at that time, but so far as notifying Harkins is concerned, I can only make the same kind of answer as I did in reference to notifying Wise. Whenever parties to whom goods were consigned called for them, they were notified verbally that the goods had been seized. Notices were verbal statements, either by myself or the Assistant Cashier, Mr. T. B. McCarthy, to the party calling for the goods. I cannot say to whom the notices were given in the above mentioned cases. As stated in my direct answers, I have not any distinct recollection of these transactions. I cannot say whether or not any notices
63 were given to Wise and Harkins immediately after the seizure was made. I cannot say whether Harkins or Wise was notified of the seizure prior to the demand for delivery of the shipment. I do not know either Wise or Harkins, nor do I know of any one having authority to act as their Agent or representative.

We agree that the above is a correct brief of evidence in the above stated case. This 4th day of December, 1902.

SAM'L H. MYERS,
Plaintiff's Attorney.

64 We agree that the Brief of Evidence of File in Richmond Superior Court in the case of Paul Heymann *vs.* Southern Railway Company used in a former Motion for New Trial be used as the Brief of Evidence in the pending Motion for New Trial, and Movant need not prepare and present any other Brief, but the present Brief of Evidence can be used as the Brief of Evidence in the Pending Motion.

November 8, 1904.

JOS. B. & BRYAN CUMMING,
Def'ts Att'ys.

The within Brief of Evidence approved as correct. Let the same be filed as part of the record.

Nov. 8th, 1904.

HENRY C. HAMMOND,
Judge Superior Court Augusta Circuit.

Filed in office Nov. 8th, 1904. D. Kerr, Deputy Clk.

65 Richmond Superior Court, Monday, October 24th, 1904.

PAUL HEYMANN
vs.
SOUTHERN R'Y COMPANY.

Decision of the Court.

"It may be that the decision of the Supreme Court already delivered in this case is at variance with decisions of other jurisdictions as to what constitutes arrival under the Wilson Act, but that decision is not a subject for review at this time and in this forum.

Further contention is made that the notice required by law on the part of the common carrier to the consignee when goods are seized in transit was not given. That question was made in the pleadings and in the brief and arguments of counsel in the Supreme Court, and it constituted a part of the evidence in the case. The Supreme Court said the jury decided contrary to the law and I do not think that that question is a subject for review here. The identical case made here today was the case made and presented to the Supreme Court, and the Supreme Court having declared that the verdict in that case was contrary to the law, I will direct a verdict in this case which will be in accordance with the law as declared by the Supreme Court."

We the jury find for the Defendant.

Oct. 24, 1904.

A. A. PELOT, *Foreman.*

66 Richmond Superior Court, October Term, 1904.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

The above stated case having come on to be heard before His Honor, Henry C. Hammond, Judge of said Court presiding, and a Jury duly impaneled, during the October Term, 1904, of said court, the Jury after hearing the evidence did upon the 24th day of October, 1904, render a verdict for the Defendant; said verdict was rendered under and by the direction of His Honor, Henry C. Hammond, Judge of said Court then and there presiding.

The plaintiff being dissatisfied with said verdict, now at the same term of the court at which the same was rendered, and within Thirty (30) days after the rendition thereof, moves for a new trial upon the following grounds, to-wit:

1st. Because the verdict was contrary to the evidence.

2nd. Because the verdict was contrary to the weight of the evidence and the principles of equity and justice.

3rd. Because the judgment of the court directing said verdict was contrary to law.

4th. Because the judgment of the court in directing said verdict was contrary to the evidence.

SAM'L H. MYERS,
Attorney for Plaintiff.

Grounds of the motion approved and subject to correction at the hearing. This 26th day of October, 1904.

HENRY C. HAMMOND,
Judge Superior Court Augusta Circuit.

67 Richmond Superior Court, October Term, 1904.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

The Plaintiff in the above stated case being dissatisfied with the verdict rendered therein, and having at the same term of court and within thirty (30) days after the rendition of the judgment, moved for a new trial;

Ordered, that the defendant show cause before me at the Court House in Augusta, Georgia, on the 5th day of November, 1904, at 10 o'clock A. M., why a new trial should not be granted upon the grounds set out in plaintiff's motion.

Ordered further, that the plaintiff have until the hearing of said motion, whether the same takes place at the date originally fixed or at some subsequent date, in which to present for approval a brief of the evidence, which brief when approved to be thereafter filed.

Ordered further, that plaintiff have leave at any time on or before the hearing of the motion to amend his motion for a new trial.

Ordered further, that this rule act as a supersedeas until the further order of this court.

October 26th, 1904.

HENRY C. HAMMOND,
Judge Superior Court, Augusta Circuit.

Service of the foregoing rule *nisi* acknowledged. Copy and all other and further service waived. This 26 day of October, 1904.

JOS. B. & BRYAN CUMMING,
Defendant's Attorneys.

Filed in Office October 26th, 1904.

GEO. B. POURNELLE, *D. C.*

68 Richmond Superior Court, October Term, 1904.

PAUL HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

Motion for New Trial.

The above motion coming on to be heard & the same having been submitted to the court without argument, the said motion for New Trial is hereby overruled.
This November 8th, 1904.

HENRY C. HAMMOND,
Judge Superior Court, Augusta Circuit.

69 HEYMANN
vs.
SOUTHERN RAILWAY COMPANY.

CANDLER, *J.:*
The questions raised by the bill of exceptions were decided adversely to the plaintiff in error when this case was here before (Southern Railway Co. *v.* Heymann, 118 Ga. 616), and are therefore *res adjudicata.*
Judgment affirmed. All the Justices concur.

70 HEYMANN
v.
SOUTHERN RAILWAY COMPANY.

This case came before this court upon a writ of error from the superior court of Richmond county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

71 Filed in office Nov. 21, 1904.

LOGAN BLECKLEY,
D. C. S. C. Ga.

Indorsed on back: No. 3 Augusta Circuit. March Term, 1905. Supreme Court of Georgia. Heymann *versus* Southern Ry. Co. Transcript of Record.

72 Clerk's Office, Supreme Court of Georgia.

ATLANTA, GA., *May 29th,* 1905.

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the bill of exceptions, transcript of record, opinion and judgment of the Supreme Court of Georgia, in the case of Paul Heyman *versus* Southern Railway Company.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

73 Clerk's Office, Supreme Court of Georgia.

ATLANTA, GA., *May 29th,* 1905.

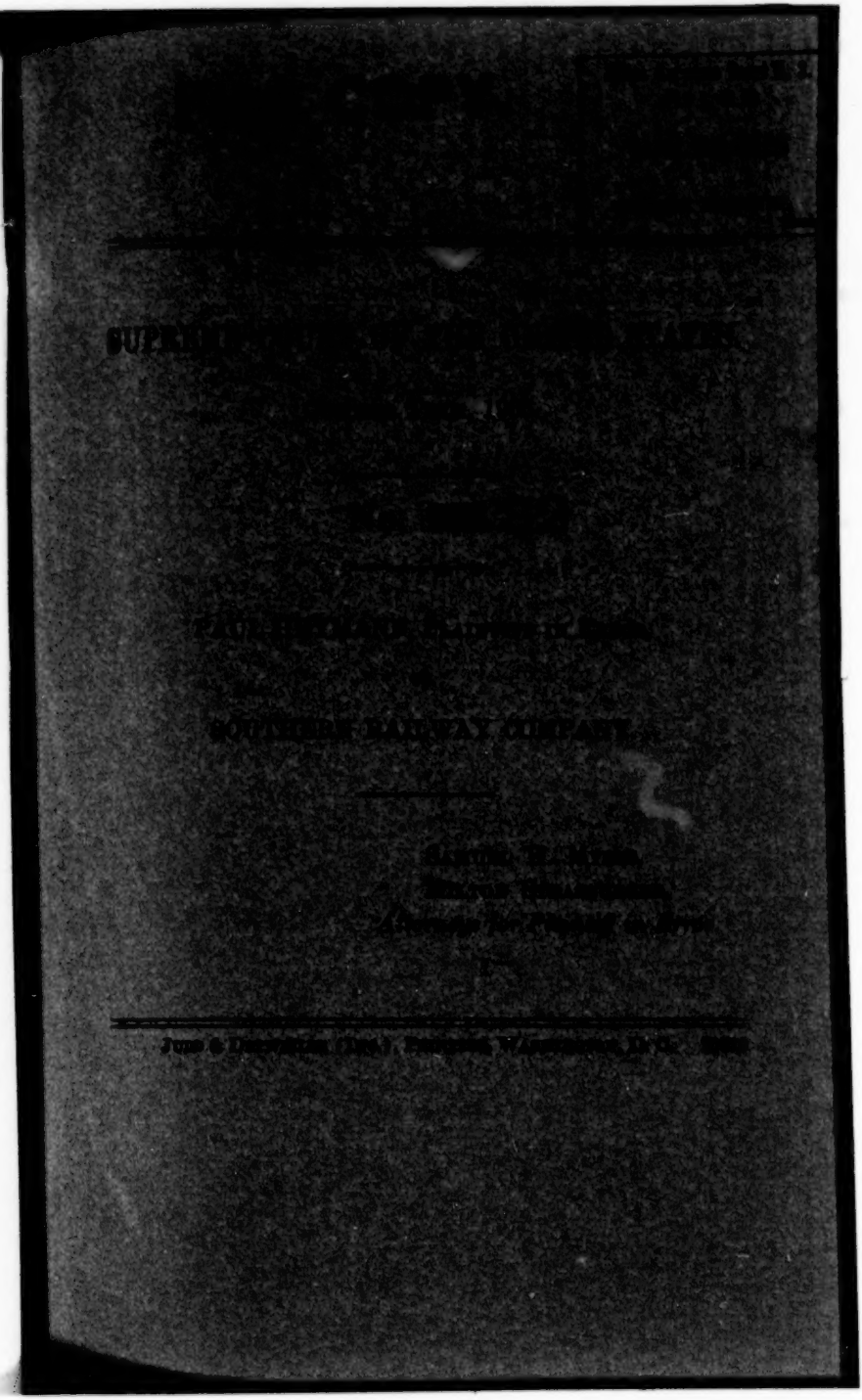
I hereby certify that the foregoing pages hereto attached contain true and complete copies of records, proceedings and files of the Supreme Court of the State of Georgia in the cases of Southern Railway Company, plaintiff in error, *versus* Paul Heymann, defendant in error, and Paul Heymann, plaintiff in error, *versus* Southern Railway Company, defendant in error; together with the original writ of error and citation from the Supreme Court of the United States issued in said cases, and copies of the petition for writ of error, assignment of errors, and bond, of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 19,785. Georgia Supreme Court. Term No. 283. Paul Heymann, Plaintiff in Error, *vs.* Southern Railway Company. Filed June 1st, 1905. File No. 19,785.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 283.

PAUL HEYMANN, PLAINTIFF IN ERROR,

vs.

SOUTHERN RAILWAY COMPANY.

STATEMENT OF CASE.

This is a writ of error to the supreme court of the State of Georgia, wherein the plaintiff in error contends that the judgment rendered in the highest court of the State is against the right especially set up and claimed by him under the interstate commerce clause of the Constitution of the United States; also that there is drawn in question the validity of the dispensary law of South Carolina on the ground of its being repugnant to the Constitution of the United States.

The plaintiff in error instituted a suit in magistrate's court to recover of the Southern Railway Company the value of certain merchandise, to wit, alcoholic liquor, entrusted to it in the State of Georgia on March 6, 1902, for transportion and delivery to certain designated parties in South Carolina who had ordered the liquor for their PERSONAL USE (Record, pp. 18 and 36), the defendant in error having entirely failed and neglected to deliver the merchandise to said consignees.

(Two consignments only were declared upon, but it has been agreed between the parties that the liability of the defendant in error upon twenty-five other shipments by the plaintiff in error shall be controlled by the decision in this case.)

The railway company filed its answer on October 18, 1902, admitting the facts set forth in the petition of plaintiff in error, and relied upon the following defense:

(Record, p. 10:)

"Defendant admits that it has not delivered the shipments described in the petition to the consignees, and as justification for not so doing shows that, under the statute law of South Carolina, no person is allowed to receive, keep, store or sell alcoholic liquors of any description, and under the said statute officers, denominated dispensary constables, are delegated to seize any alcoholic liquors coming into the State which they may suspect are there in violation of the law of the State of South Carolina, and the constables so appointed are authorized under the statute, without any warrant or process, to seize and take possession of any alcoholic liquors wheresoever they may find them, which they may suspect as being within the State contrary to the statute aforesaid."

See statute of South Carolina, Record, p. 15.

On appeal to the Richmond superior court, at the October term, 1902, the case came on to be heard before a jury duly impaneled, and the plaintiff offered in evidence an agreed statement of facts, from which it appears that in due course of transportation the two packages reached Charleston, South Carolina, and were unloaded in the defendant company's warehouse, ready for delivery; that almost immediately after the arrival and unloading of the liquor, while in said warehouse and before notice of arrival to the consignees, the said packages were seized by the two duly appointed constables of the State of South Carolina, acting, without warrants, under the dispensary law of said State; that the defendant in error failed to notify the consignees

of the seizure, and did not inform the consignor thereof until demand had been made of the company to show delivery. It further appears that the contracts of sale had been entered into by the plaintiff in error in the State of Georgia, by the terms whereof he had guaranteed to deliver the whiskey to the purchasers in South Carolina, and that he had refunded to the purchasers the amounts paid by them under the terms of said contracts.

Upon said trial the court instructed the jury in part as follows:

"In reference to the 'dispensary law,' my view of it is this: That no State can make any valid law regulating interstate commerce. It does not lie within the power of the legislature of South Carolina to pass any valid law regulating commerce between the States of Georgia and South Carolina, and, if they do so, such law is unconstitutional and void on its face. * * *

"So if you believe that Paul Heymann consigned a cask of whiskey to the person named in Charleston, and delivered it to the Southern Railroad Company here, and that the railroad contracted to deliver it there, and that it has never done so, and that the reason it has never done so is because constables, acting under the 'dispensary law' of South Carolina, seized it in the depot of the railroad company before it was delivered to the consignee, and that that is the only reason why it has not been delivered, I charge you that would not be a legal defense to the railroad company, and it would be liable to the consignor for the delivery of those goods. * * *

"I charge you further, that, under what is known as the 'Wilson law,' passed by Congress, after a consignment of liquor from one State to another (the same being interstate commerce), has been delivered to the consignee, it would be subject to the police regulations of the State into which it is shipped, but, until delivery has been made to the consignee, if it is still in the possession of the common carrier, it is not subject to the police regulations of that State into which it is shipped" (Record, pp. 20–22).

A verdict was rendered against the defendant in error for the sum claimed; whereupon it moved for a new trial upon the following, among other, grounds:

"Because the court erred in charging the jury as follows: 'In reference to the dispensary law, my view of it is this: That no State can make any valid law regulating interstate commerce. It does not lie within the power of the legislature of South Carolina to pass any valid law regulating commerce between the States of Georgia and South Carolina, and, if they do so, such law is unconstitutional and void on its face."

Said motion was duly overruled and the case appealed to the supreme court of the State of Georgia, being the highest court in said State in which a decision in said suit could be had.

The supreme court considered two points with respect to the defense of the defendant in error:

"First. Was the seizure of the whiskey by the constable in Charleston a *prima facie* valid exercise of local authority?

"Second. If it was, did that fact excuse the railroad company from liability on account of the loss of the goods entrusted to it for shipment?"

The court in its opinion stated that if the goods were in the course of interstate commerce at the time of seizure "such seizure by the constable was not even *prima facie* legal, for the very law had been declared unconstitutional so far as it interfered with interstate commerce" (citing Scott *vs.* Donald, 165 U. S., 58).

After considering the contention of plaintiff in error "that under the ruling in the Rhodes case an interstate shipment is not completed until the goods are delivered to the consignee; that not until such delivery can they be said to have 'arrived' within the meaning of the act of Congress of August 8, 1890, commonly known as the Wilson act," the court says:

"If this contention be correct, then the judgment of the lower court must be affirmed, FOR THE RAILROAD COMPANY COULD NOT RELIEVE ITSELF OF LIABILITY BY REASON OF THE FACT THAT IT YIELDED TO THE EXERCISE OF A PALPABLY ILLEGAL AND UNWARRANTED AUTHORITY."

Adding:

"We do not, however, draw the same conclusion from the argument in the Rhodes case as does counsel for the defendant in error, as *we do not find in that case* ANY AUTHORITY *for the proposition laid down, or any* REASON *for a ruling on that proposition.* The Rhodes case holds nothing more or less than that the movement of a package of goods from the platform of a station to a freight warehouse (the goods having been shipped from outside the State) is a part of the interstate transportation; and that the servant of the railroad company so moving the package could not be convicted under the State statute under consideration. There was no question in the case as to whether or not the interstate shipment was completed upon reaching the warehouse, or if delivery to the consignee was necessary to complete such transportation; and *while some of the language used by Mr. Justice White in delivering the opinion would seem to indicate that he considered delivery essential to an 'arrival' under the Wilson act, that point was not in issue and was not ruled.* We think it far more consistent with the evident purpose of the Wilson act to hold that *when the goods have been placed in the railroad company's warehouse in readiness for the call of the consignee, the interstate transportation is at an end, and that the goods have 'arrived,' within the meaning of that act, and are at once subject to the State law passed in the exercise of the police power.* * * * If, then, the goods were in Charleston in the hands of a bailee awaiting the call of the consignee, we fail to see how it can be said, without manifest absurdity, that in any sense they had not arrived in the State of South Carolina.

"* * * It is, of course, apparent that this language does not constitute a ruling by the court, but was merely a passing observation as to what might 'perhaps' be the ruling made in the hypothetical case given, *in the event the court should see fit to be guided by the obiter dicta of the Rhodes case.* * * *

"The foregoing discussion leads us to the conclusion that the seizure of the whiskey by the constables in Charleston was, at least, *prima facie* legal."

The court concluded that the verdict rendered by the jury, "being contrary to law, should have been set aside on motion for a new trial," and the judgment was therefore reversed (Record, pp. 23–27).

The effect of this decision was to preclude the plaintiff in error from succeeding in his suit, but for the purpose of obtaining a final decision, reviewable by this court, the case was retried at the October term, 1904, of the Richmond county superior court upon the same pleadings and agreed statement of facts (Record, p. 32).

At said trial the presiding justice, in his instruction to the jury, used the following language (Record, p. 38):

"It may be that the decision of the supreme court already delivered in this case is at variance with decisions of other jurisdictions as to what constitutes arrival under the Wilson act, but that decision is not a subject of review at this time and in this forum. * * * The identical case made here today was the case made and presented to the supreme court, and the supreme court having declared that the verdict in that case was contrary to the law, I WILL DIRECT A VERDICT IN THIS CASE WHICH WILL BE IN ACCORDANCE WITH THE LAW AS DECLARED BY THE SUPREME COURT."

In accordance with said direction the jury returned a verdict for the defendant; whereupon the plaintiff moved for a new trial upon the following, among other, grounds (Record, p. 38):

"Because the judgment of the court directing said verdict was contrary to law" as to what constitutes arrival under the "Wilson act."

From the order overruling said motion for new trial the plaintiff appealed to the supreme court of the State of Georgia, which affirmed the same upon the grounds stated in its former opinion, to wit:

"The questions raised by the bill of exceptions were decided adversely to the plaintiff in error when THIS CASE WAS HERE BEFORE (So. Ry. Co. *vs.* Heymann, 118 Ga., 616), and are therefore RES ADJUDICATA" (Record, p. 40).

The petition for writ of error was thereupon presented to and allowed by this court to review the final decision in said cause, plaintiff in error contending that there is drawn in question the validity of the dispensary law of the State of South Carolina and an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, the decision of the highest court of the State being in favor of their validity; also that said decision is against the privilege and right especially set up and claimed under the interstate-commerce clause of the Constitution.

SPECIFICATION OF ERRORS.

1. The court erred in holding that alcoholic liquors entrusted to a common carrier in the city of Augusta, State of Georgia, and consigned to persons residing in Charleston, South Carolina, when placed in the warehouse of the common carrier in the latter State and before their actual delivery to the consignees, were deprived of the protection afforded by the interstate-commerce clause of the Constitution of the United States by virtue of the provisions of the act of Congress of August 8, 1890, commonly designated the "Wilson act."

2. The court erred in holding that alcoholic liquors shipped from Augusta, Georgia, under contract entered into in said State, to parties in Charleston, South Carolina, which had reached the latter city and been placed in a freight warehouse of the railroad company in said city, had "arrived" in the State of South Carolina within the meaning of said act of Congress, and in further holding that such

liquors, before their actual delivery to the consignees, were subject to the dispensary law of the said State.

3. The court erred in holding that the seizure by constables appointed under the dispensary law of South Carolina of alcoholic liquors which had been entrusted to a common carrier in the State of Georgia for delivery to parties in South Carolina, and which liquors had reached Charleston and been placed in a freight warehouse of the railroad company and undelivered, was PRIMA FACIE valid.

4. The court erred at the retrial of the cause in directing a verdict for the defendant in accordance with the law set forth in the opinion of the State supreme court as to what constitutes "arrival" under the Wilson act.

5. The supreme court of Georgia erred in affirming the judgment of the Richmond county court in favor of the defendant in error and in overruling the motion of plaintiff in error for a new trial.

ARGUMENT AND AUTHORITIES.

The various assignments of error will be considered together as presenting for determination by this court the single question: Whether the seizure by constables appointed under the dispensary law of South Carolina of alcoholic liquor while in the hands of the common carrier was a *prima facie* valid exercise of legal authority.

In order to determine this question it becomes necessary, as stated by the supreme court of Georgia, to decide whether "at the time of the seizure the interstate shipment of the goods had been completed; for if they were still in the course of interstate transportation, the seizure was not even *prima facie* legal, for the very law under which the seizure was made had, prior to such seizure, been declared by the Supreme Court of the United States to be unconstitutional in so far as it interfered with interstate commerce."

THE SEIZURES WERE VOID.

The Wilson act provides—

"That all liquors transported into any State or remaining there for use, consumption or sale therein, shall on arrival in such State be subject to the laws of such State enacted in the exercise of its police powers" (8 Aug., 1890, 26 Stat. L., 313).

"The arrival of intoxicating liquors in a State, within the meaning of the act of Congress of August 8, 1890, making them subject to the police laws of the State on arrival therein, is not complete so long as the property is in course of transportation, but the State laws attach only after the consummation of the shipment, to wit, upon its arrival at the point of destination AND DELIVERY THERE TO THE CONSIGNEE."

Rhodes *vs.* Iowa, 170 U. S., 412.

"The Wilson act goes no further than to permit the police laws of a State to be applied to liquors which have been shipped into the State as an article of interstate commerce after such liquors have reached the end of the shipment AND THEN DELIVERED TO THE CONSIGNEE."

In re Bergen, 115 Fed. Rep., 340.

In State *vs.* Holleyman, 33 S. E. R., 366, the defendant had purchased whiskey in North Carolina, and while transporting it from the place of purchase to his home, after entering South Carolina, was arrested for a violation of the State law and the whiskey seized. The liquor was for his personal use, was being conveyed by him in his buggy, and nothing had been done to break the continuity of the transportation from the place of purchase to his home.

It was held by the supreme court of South Carolina that the whiskey had not, at the time of its seizure, arrived within the meaning of the Wilson act, but was in the course of transportation, and was not subject to seizure under the very statute under consideration in the case at bar.

The purpose of the Wilson act was not to go to the vital aspect of interstate commerce. The aspect which is vital and fundamental is the right of importation into one State from another; the right of importation, however, does not necessarily carry with it the right to sell.

Under the Wilson act the moment whiskey comes into the State and becomes absolutely a part of the wealth thereof the laws of the State act, seize it, and absolutely prevent its use, sale, or consumption in any way. But before the laws of the State can operate the shipment must have been ended—the goods must have reached their destination.

The right to resell an imported article whilst remaining in its original package is an *incidental*, but not a *fundamental*, feature of interstate commerce. The consent of Congress that such incidental feature be subject to the laws of the State cannot, by mere construction, be enlarged so as to affect one that is fundamental and *vital*, and is necessary to the very life of commercial intercourse between the several States.

To the extent stated the Wilson act is constitutional, and it was so held.

In re Rahrer, 140 U. S., 563.

"The purpose of Congress in adopting it was declared to have been to allow State laws to operate on liquor shipped into one State from another, so as to prevent the sale in the original package in violation of said laws."

Vance *vs.* Vandercook, 170 U. S., 444.

In the case at bar the seizures were made before the goods had completed their course of transportation; the railroad company was still in pursuance of the contract of carriage (its duty being to transport and deliver to certain specified consignees), and the whiskey had not "arrived" within the State nor been incorporated with the wealth thereof.

"The interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State to another, and protects it until the termination of the ship-

ment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale BUT ONLY AFTER DELIVERY.

"It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State, on the order of a resident for his own use."

Vance *vs.* Vandercook, 170 U. S., 444.

"It is the duty of dispensary constables to seize contraband liquor as directed by the statute law of the State. If, however, they seize liquor not contraband, they go beyond the law, and violate individual right. If this is done willfully and maliciously, they are liable for punitive damages. Liquor purchased in another State and shipped to the purchaser in this State is not contraband, being protected as an article of interstate commerce UNTIL IT IS DELIVERED TO THE PURCHASER."

Citing—

Rhodes *vs.* Iowa, 170 U. S., 412.
State *vs.* Holleyman, 31 S. E., 362; 33 S. E., 366.

"The fact that the purchaser to whom it is consigned is engaged in the illicit sale of liquor, and purchases it for the purpose of resale, can make no difference. The liquor is none the less an article of interstate commerce, and cannot be legally seized until it is DELIVERED TO THE CONSIGNEE."

Smith *vs.* La Far, chief constable, 46 S. E., 333.

The supreme court of Georgia, in holding that the goods were not in the course of interstate commerce, bases its decision upon the case in 111 Ga., 7, wherein it is held that under the law of Georgia, "when goods are placed in a freight warehouse, the relationship of carrier and shipper ceases, and the railroad company becomes simply a warehouseman."

This is not the true test of the time when protection under the interstate-commerce clause of the Constitution ceases.

The error of the test applied by the supreme court of Georgia is at once apparent. It would have the effect of terminating the interstate journey in some States at an earlier period than in others, and the protection afforded by the Constitution would not be the same in the several States.

The duration of the protection afforded by the Constitution is settled by this court. In discussing the case of Bowman *vs.* Railway Company, 125 U. S., 465, the following language is used:

"It was decided that the transportation of merchandise from one State into and across another was interstate commerce and was protected from the operation of State laws from the moment of shipment, whilst in transit, AND UP TO THE ENDING OF THE JOURNEY BY THE DELIVERY OF THE GOODS TO THE CONSIGNEE AT THE PLACE TO WHICH THEY WERE CONSIGNED."

Rhodes *vs.* Iowa, 170 U. S., 415.

Again (p. 419):

"The fundamental right which the decision in the Bowman case held to be protected from the operation of State laws by the Constitution of the United States was the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract."

This case has reached the Supreme Court because of the refusal of the State court to follow the doctrine announced by this court that delivery is essential to an "arrival" under the Wilson act, the State court being of opinion that "it is far more consistent with the evident purpose of the Wilson act to hold that when goods have been placed in the railroad company's warehouse in readiness for the call of the consignee, the interstate transportation is at an end, and that the goods have 'arrived.'"

If the doctrine announced by Mr. Justice White in the Rhodes case be *obiter dicta*, as suggested by the State court

(although plaintiff in error does not so regard it), yet the same has been consistently followed and ruled by this court in the following cases:

Vance *vs.* Vandercook, 170 U. S., 439.
Adams Express Co. *vs.* State of Iowa, 196 U. S., 141.
Foppiano *vs.* Speed, Advance Sheets U. S., Jan. 15, 1906, p. 140.

In the case of Adams Express Co. *vs.* State of Iowa (*supra*) this court say:

"Intoxicating liquors shipped C. O. D. from one State into another cannot be subjected to seizure under the laws of the latter State while in the hands of the express company without infringing the commerce clause of the Federal Constitution."

LIABILITY OF DEFENDANT IN ERROR.

If the seizure of the merchandise was during the course of interstate commerce, *under a statute which had been held to be unconstitutional*, such seizure would be no defense to the defendant in error, whether it held the goods as a common carrier or as warehouseman.

This principle is conceded by the supreme court of Georgia in its opinion in this case, wherein it says:

"If the contention that an interstate shipment is not complete until the goods are delivered to the consignee be correct, then the judgment of the lower court must be affirmed; for the railroad company could not relieve itself of liability by reason of the fact that it yielded to the exercise of a palpably illegal and unwarranted authority" (Record, p. 24).

In case of loss the presumption of law is against the common carrier, and no excuse avails him unless it was occasioned by the act of God or the public enemy.

Civil Code of Georgia, sec. 2264.
66 Ga., 441.
76 Ga., 597.
110 Ga., 665.

Failure to deliver puts the burden of proof on the carrier.
34 Ga., 315.

Seizure under process is a defense to the carrier only in cases where the process is legal and regular; SEIZURE UNDER VOID PROCESS IS NO DEFENSE.

5 Am. & Eng. Ency. Law (2d ed.), p. 228.
Schouler on Bailments.
104 Mass., 159.
117 Mass., 591.
51 Ind., 181.
62 Miss., 86.

It is respectfully urged that the judgment of the State court should be reversed.

Respectfully submitted.

SAMUEL H. MYERS,
MILTON STRASBURGER,
Attorneys for Plaintiff in Error.

FILE COPY.

Office Supreme Court U. S.
FILED
MAR 29 1906
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. [redacted].32

PAUL HEYMANN, PLAINTIFF IN ERROR,

vs.

SOUTHERN RAILWAY CO., DEFENDANT IN ERROR.

BRIEF OF JOS. B. CUMMING COUNSEL FOR DEFENDANT IN ERROR.

Supreme Court of the United States, October Term, 1905.

No. 283.

PAUL HEYMANN, Plaintiff in Error,

vs.

SOUTHERN RAILWAY CO., Defendant in Error.

Brief of Counsel for Defendant in Error.

The main question involved in this case is whether or not the shipment involved had *arrived* within the State of South Carolina within the meaning of the Wilson Act, so called.

Session Laws, 1890, p. 313.

That act subjects to the operation of the State laws intoxicating liquors transported into the State "for use, consumption, sale or storage therein."

Session Laws, 1890, p. 313.

The transportation proper of the shipment involved in this case had terminated.

Page 32, printed record.

The status of the liquors was that of being held in storage.

Page 32, printed record.

The common carrier liability had ceased and the defendant company occupied the position of warehouseman. There seems to be no statute or decision in South Carolina which clearly fixes the time when the common carrier liability ceases, though the case of Spears vs. Spartanburg Railway Co. sustains the above view as far as it goes.

Spears vs. Spartanburg R'y Co., 11 S. C. 158

The Common Law, therefore, will be assumed as controlling. It sustains the above proposition.

Norway Plains Co. vs. Boston & Maine R'd Co.
1 Gray 206.
Georgia & Alabama R'd vs. Pounds, 111 Ga. 7.

It is true the storing was done by the same corporation that engaged in the transportation, but nevertheless the goods were not at the time being transported, they were in store.

Prior to the Wilson Act under the decisions of this court shipments of goods from without the State did not become liable to state laws so long as they remained in the original package. The Wilson Act undertook to change entirely the test to be applied to ascertain when liquors became subject to State laws.

That test is when the liquor has *arrived* for certain purposes.

When it has arrived within the State—the mere borders of the State—for transportation to a further point within the State it is not yet within the operation of the Wilson Act.

Rhodes vs. Iowa, 170 U. S. 412.

But when it has arrived "for use," for "consumption," or for "storage," it has become subject to the act.

If the consignee had been on hand when the shipment arrived in Charleston and the shipment had been handed out from the car by the conductor to the shipper, if a dispensary constable had been present he could not have touched the shipment until it left the conductor's hands, but the moment it was in the hands of the consignee it was subject to seizure, because, though in the original package, it was then in the State not merely for transportation but for use of some kind. By the same process of reasoning we would reach the conclusion that where the arrival across the border of the State had ceased to be for mere transportation but the liquor had arrived to the extent of being held in storage it was subject to the State statutes.

The court is also respectfully referred to the reasoning in the opinion of the Supreme Court of Georgia as set out in the record. Printed record, p. p. 23-27.

Certain liquors shipped from Boston, Mass., to Machias, Me., arrived at Machias and placed in the railroad company's freight house, were seized by the State officers. This shipment was held to have arrived within the State, within the meaning of the Wilson Act, so as to be within the operation of the State laws.

State vs. Intoxicating Liquors, 49 Atl. Rep. (Me.) 670.

Suppose the defendant railroad had had no warehouse of its own at destination and had stored the shipment with some warehouseman to safe keep the goods till called for by the consignee, would it not be said transportation had ceased, arrival had taken place, that the goods were in store and therefore subject to State laws? The fact that carrier and warehouseman happened to be the same person would not change the rule.

Unquestionably if this shipment had been stored by the consignee in some warehouse it would have been subject to the Dispensary statutes. Can a consignee defeat this statute by leaving his liquors on store with the railroad company? If such were the case it would result in the storehouses of the railroads in the State becoming convenient distributing depots for liquor, consignees thus obtaining great opportunity to defeat the purposes of the State statute.

Under the only exception made in this case it would hardly seem that the question of the carrier being protected when goods are taken from it by legal process calls for discussion. That point seems to be granted.

However, the following authorities are cited as sustaining the proposition:

Hutchinson on Carriers (2nd ed.) §§ 210 b. 210 c.
Savannah R. Co. vs. Wilson, 48 Ga. 537.
W. & A. R'd Co. vs. Ohio Valley Banking Co., 107 Ga., 512.

JOS. B. CUMMING,
Counsel for Southern Railroad Co.

Supreme Court of the United States.

No. 32.—October Term, 1906.

Paul Heymann, Plaintiff in Error, vs. Southern Railway Company. } In error to the Supreme Court of the State of Georgia.

[December 3, 1906.]

Mr. Justice White delivered the opinion of the Court.

In March, 1902, P. B. Wise and E. D. Harkins, residents of Charleston, South Carolina, each ordered a cask of whiskey from Paul Heymann, a wholesale liquor dealer in Augusta, Georgia. The price of the whiskey accompanied the orders, which were given upon the understanding that if for any cause delivery was not made to the consignees the purchase price would be refunded.

The two casks of whiskey, consigned to the respective purchasers at Charleston, were delivered to the Southern Railway Company at Augusta. In due course the packages of liquor reached Charleston, and were by the railroad company at once unloaded into its warehouse, ready for delivery. The record does not show that the consignees were notified of the arrival of the goods. Shortly after the goods were so placed in the warehouse of the railroad company they were seized and taken from its possession. The seizures were made without any warrant or other process, by constables asserting their right to do so under the authority of what is known as the dispensary law of South Carolina, which law was considered in *Vance* v. *Vandercook Co.*, No. 1, (170 U. S. 438.) The agent of the railroad company did not resist the seizure.

Thereafter, Heyman, the consignor, sued the railroad company for failing to make the deliveries as contracted in the bills of lading, and in the Superior Court of Richmond County, on appeal from a justice's court, obtained a verdict and judgment. The cause was appealed to the Supreme Court of Georgia, and by that court the judgment was reversed and the case remanded. (118 Ga. 616.) On the second trial the defendant had a verdict and judgment; and on appeal the judgment was affirmed by the Supreme Court of Georgia upon the authority of its previous opinion. The case was then brought here.

The act of Congress of August 8, 1890, commonly known as the Wilson Act, provides that all intoxicating liquors "transported into any State or Territory, or remaining therein for use, consumption, sale, or storage

therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The Supreme Court of Georgia held—although the goods had not been delivered to the consignees and although there was no showing of notice to them from the carrier, or even if notice by the local law was unnecessary, of the lapse of a reasonable time for the consignees to call for and accept delivery—that as the interstate transportation of the goods ended when they were placed in the warehouse, and the carrier was thenceforward liable only as a warehouseman, and that the goods ceased to be under the shelter of the interstate commerce clause of the Constitution. This was based upon the conclusion that goods warehoused under the circumstances stated must be considered as having arrived within the meaning of the Wilson Act, and therefore the packages of liquor in question were lawfully seized because subject to the police authority of the State of South Carolina. The meaning thus affixed to the word "arrival," as employed in the Wilson Act, was adopted after consideretion of the opinion in *Rhodes* v. *Iowa*, (170 U. S. 412.) While it was conceded by the learned court that language contained in the opinion in that case indicated that this court deemed delivery essential to constitute "arrival" within the Wilson Act, yet as the expressions in the opinion to that effect were not binding, as they were merely obiter, since the Rhodes case was only concerned with whether goods had come under the State authority on reaching their place of destination and before they had been warehoused by the carrier.

We cannot concur in the view taken by the learned court of the decision in the Rhodes case. In that case a railroad employe at a town in Iowa was indicted under the law of that State because after an interstate shipment of liquors had reached the depot of the final carrier, at the point of destination, he moved the package from the platform where it had been placed on being unloaded to a freight warehouse belonging to the railroad company, a few feet away. It was insisted on behalf of the State of Iowa that the effect of the Wilson Act was to confer upon that State the power to subject to State regulations merchandise shipped from another State the moment it reached the boundary line of the State of Iowa. On the other hand it was contended that an interstate shipment of liquor did not arrive within that State within the meaning of the Wilson Act until the consummation of the shipment by delivery at its destination to the consignee. The case, therefore, necessarily involved deciding the meaning of the word arrival in the Wilson Act, and this required an ascertainment of when goods shipped from one State to another, generally speaking,

ceased to be controlled by the interstate commerce clause of the Constitution, and how far the general rule resulting from the power of Congress to regulate commerce had been limited, if at all, by the provisions of the Wilson Act. Considering the first question, the elementary and long-settled doctrine was reiterated that delivery and sale in the original package was necessary to terminate interstate commerce, so far as the police regulations of the States were concerned. In passing upon the second question the court, referring to a previous case involving the Wilson law, (*In re Rahrer*, 140 U. S. 545,) pointed out that the contention which was made in that case, that the Wilson Act was repugnant to the Constitution of the United States because it was an abdication by Congress of its power to regulate commerce, was held to be untenable, because the Wilson Act was simply legislation by Congress creating a uniform rule applicable to all the States, by which liquor, when the subject of interstate commerce, could come under the power of a State at an earlier date than it otherwise would have done. Contemplating the grounds of the previous ruling upholding the constitutionality of the Wilson Act and coming to precisely determine the meaning of the word "arrival" as used in that act, it was said in the Rhodes case (p. 424):

"Interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the State to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee."

And as a result of this ascertainment of the meaning of the Wilson Act it was held that as the act of moving the goods preceded the period affixed by the Wilson Act at which the State power could attach, the conviction was erroneous.

The Rhodes case involved of necessity a construction of the import of the Wilson Act, and the mere fact that the particular conduct which happened in that case to be the subject of complaint occurred prior to the delivery did not operate to cause the affirmative construction which was given to the Wilson Act, and which it was necessary to give, to be obiter, and therefore subject to be disregarded. And a case decided by this court on the same day as the Rhodes case leaves no room for controversy concerning the affirmative construction given to the Wilson Act in the Rhodes case. The case referred to is *Vance* v. *Vandercook Co.*, No. 1, (170 U. S. 438.) The court said (p. 451):

"The interstate commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale but only

after delivery. (*Scott* v. *Donald*, and *Rhodes* v. *The State of Iowa*, *supra*.) It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State, on the order of a resident for his use."

And in subsequent cases the construction adopted in the previous cases of the word "arrival" as employed in the Wilson Act has been reaffirmed and applied. Thus in *American Express Co.* v. *Iowa*, (196 U. S. 133,) in in reviewing the Rhodes case the meaning of the Wilson Act was again reiterated, the court saying (p. 142):

"The contention was that, as by the Wilson Act, the power of the State operated upon the property the moment it passed the State boundary line, therefore the State of Iowa had the right to forbid the transportation of the merchandise within the State and to punish those carrying it therein. This was not sustained. The court declined to express an opinion as to the authority of Congress, under its power to regulate commerce, to delegate to the States the right to forbid the transportation of merchandise from one State to another. It was, however, decided that the Wilson Act manifested no attempt on the part of Congress to exert such power, but was only a regulation of commerce, since it merely provided, in the case of intoxicating liquors, that such merchandise, when transported from one State to another, should lose its character as interstate commerce upon completion of delivery under the contract of interstate shipment, and before sale in the original packages."

Again, in *Foppianno* v. *Speed*, (199 U. S. 501,) referring to the Wilson Act and its previous construction, it was declared (p. 517):

"This act was held to be constitutional in the case of *In re Rahrer*, (140 U. S. 545,) and that by virtue of said act State statutes might operate upon the original packages of intoxicating liquors before sale in the State. *Rhodes* v. *Iowa*, (170 U. S. 412,) and *Vance* v. *W. A. Vandercook Company No. 1*, (170 U. S. 438,) held that the State statute must permit the delivery of the liquors to the party to whom they were consigned within the State, but that, after such delivery, the State had power to prevent the sale of the liquors, even in the original package."

As the general principle is that goods moving in interstate commerce cease to be such commerce only after delivery and sale in the original package, and as the settled rule is that the Wilson law was not an abdication of the power of Congress to regulate interstate commerce, since that law simply affects an incident of such commerce by allowing the State power to attach after delivery and before sale, we are not concerned with whether, under the law of any particular State, the liability of a railroad company as carrier ceases and becomes that of a warehouseman on the goods reaching their ultimate destination before notice and before the expiration of a reasonable time for the consignee to receive the goods

from the carrier. For, whatever may be the divergent legal rules in the several States concerning the precise time when the liability of a carrier as such in respect to the carriage of goods ends, they cannot affect the general principle as to when an interstate shipment ceases to be under the protection of the commerce clause of the Constitution, and thereby comes under the control of the State authority.

Of course we are not called upon in this case, and do not decide, if goods of the character referred to in the Wilson Act, moving in interstate commerce, arrive at the point of destination and after notice and full opportunity to receive them are designedly left in the hands of the carrier for an unreasonable time, that such conduct on the part of the consignee might not justify, if affirmatively alleged and proven, the holding that goods so dealt with have come under the operation of the Wilson Act, because constructively delivered. We say we are not called upon to consider this question, for the reason that no facts are shown by the record justifying passing on such a proposition. And as in this case we deal only with the power of the State to enforce its police regulations against goods of the character of those enumerated in the Wilson Act, the subject of interstate commerce, before delivery, we must not be understood as in any way limiting or restricting the ruling made in *Vance* v. *Vandercook Co.*, No. 1, *supra*, upholding the right of a citizen of one State to bring from another State into the State of his residence, and keep therein, for his personal use, the merchandise referred to in the Wilson Act. In other words, as in the case at bar, delivery had not taken place when the seizures were made, and the control of the State over the goods had not attached, we are not called upon to consider whether, if the power of the State had attached by delivery, the State might not have levied upon the goods on the charge that they had not been *bona fide* brought into the State, and were not held by the consignees for their personal use, and, therefore, were not within the ruling in *Vance* v. *Vandercook Co.*, No. 1, *supra*.

The conclusion that the court below erred in declining to follow the prior rulings of this court construing the Wilson Act disposes of the entire controversy arising on the record before us, for the following reasons: In its answer filed in the trial court the railroad company substantially defended alone upon the ground that the seizure was rightful. And the Supreme Court of Georgia treated the liability of the defendant as depending solely upon the validity of the seizure. The court said:

"If the goods were still in the course of interstate transportation, the seizure by the constable was not even *prima facie* legal, for the very law under which the seizure was made had, prior to such seizure, been declared by the Supreme Court of the United States to be unconstitutional in so far as it interfered with interstate commerce. (*Scott* v. *Donald*, 165 U. S. 58.)

It therefore follows that if the shipment had not been completed at the time the goods were seized, the railroad company would have no right to defend on the ground that it submitted to the superior authority, granting that such a defense, if established, would relieve it from liability."

Moreover, in this court counsel in their brief on behalf of the defendant in error rely exclusively upon the correctness of the construction given to the Wilson Act by the court below, and do not urge, in the event such construction be not sustained, that it was exempt for any reason whatever from liability.

The judgment of the Supreme Court of Georgia is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Reversed.

True copy.

Test:

Clerk Supreme Court, U. S.